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OVERSIGHT OF THE OPERATIONS OF THE BVA AND VARIOUS LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE OPERATIONS OF THE BOARD OF VETERANS' APPEALS; S. 2011, THE PROPOSED VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1988; S. 1805, S. 2105, S. 2267, S. 2268, S. 2269, SECTION 2 OF S. 2294, AND S. 2306

JUNE 9, 1988

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OVERSIGHT OF THE OPERATIONS OF THE BVA AND VARIOUS LEGISLATION

THURSDAY, JUNE 9, 1988

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 8:08 a.m., in room SR-418, Russell Senate Office Building, Hon. Alan Cranston (chairman of the committee) presiding.

Present: Senators Cranston, Mitchell, Rockefeller, Murkowski, and Thurmond.

OPENING STATEMENT OF CHAIRMAN CRANSTON

Chairman CRANSTON. Good morning. The hearing will come to order. I welcome each of you to this hearing, which concerns S. 2011, S. 2105, S. 1805, and various administration proposals relating to compensation and other VA programs, sections 201, 202, 304, 305 of S. 2267, sections 3 and 4 of S. 2268, S. 2269, and S. 2306.

Additionally, we will be hearing testimony regarding the operations of the Board of Veterans' Appeals.

S. 2011 would provide for a cost-of-living adjustment in the rates of VA service-connected compensation and DIC which the CBO currently estimates to be 4.5 percent for fiscal year 1989. I believe we must attach the highest priority to meeting the needs of the 2.2 million veterans with service-connected disabilities and the 310,000 survivors of those who have made the final sacrifice.

This is and always has been my No. 1 priority in Veterans' Affairs. Through the COLA, we can ensure that the value of their VA benefits is not eroded by inflation.

We will also be hearing testimony this afternoon on S. 2105, legislation I introduced with Senator Murkowski to extend for 4 years the VA's authority to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other community-based facilities.

I am pleased to report that a recent evaluation of the VA's contract program concluded that it is very successful in helping those who have serious substance abuse problems to stay off drugs and alcohol. More than 75 percent of those veterans who had completed the residential treatment program were found to be abstaining from any substance abuse, whereas only 58 percent of veterans who had dropped out of the program remained sober.

In addition, employment rates for the treatment group increased from 16.1 percent at the time of admission to 46.8 percent at the time of followup.

Residential treatment programs offer veterans extended positive reinforcement, counseling, and rehabilitation assistance to help them reintegrate into society and to find employment and housing following detoxification.

Although S. 2015 would reauthorize the program for 4 years, I now favor—based on the results of the study and the testimony this morning—making the program permanent, as the administration has proposed.

I am also looking forward to the witnesses' testimony on S. 1805, which Senator Mitchell introduced, to provide that payments made pursuant to the settlement in the agent orange litigation be excluded from computation of income for purposes of VA pension and eligibility for VA hospital care.

Our other topic this morning is oversight of the VA Board of Veterans' Appeals. The BVA is a very important part of the VA system. It has the final word on appeals by veterans and other claimants on individual benefit determinations. Yet, unlike its counterparts in the U.S. court system, the BVA decides over 40,000 cases per year.

At the BVA, the claimant usually appears with a veterans' organization service officer, but without an attorney. The procedures are informal, with the intention of making it easier for the veteran to prove his or her case; but the same informal procedures may work to his or her detriment.

I am sure that we all share the same goal, to ensure that the BVA is operating in a manner which affords veterans and other claimants a fair and just determination of their claims.

Over the past year, a number of issues concerning the operations of the Board of Veterans' Appeals have been raised. These include the use of production quotas and associated bonuses for board members, an increase in the number of remands and the effects of those remands on veterans, the consistency of board decisions, the manner of utilizing and assigning physician board members, the use of independent medical opinions, the desirability of requiring a unanimous decision to constitute a final decision, and the general timeliness and quality of the decisions.

I look forward to hearing testimony on these and other issues regarding the operation of the Board of Veterans' Appeals. I believe that the concerns and issues I have outlined, which are discussed in more depth in my written statement, illustrate that BVA operations are much in need of congressional oversight. Hence, I have asked the veterans' service organizations and the BVA to address a number of prehearing questions.

At this time, I want to thank very much everyone involved in the preparation and timely submission of those answers. The questions and answers, along with my written statement, are available at the press table.

One final point about the relationship between the BVA and judicial review. I have long said that the need for some avenue of judicial review of VA adjudications does not depend on whether or not the present system of claims adjudication including the BVA is broken. I continue to believe that is true.

I also continue to believe that the advent of judicial review, as proposed in S. 11, would serve to improve the adjudication process by subjecting BVA decisions to review and thereby encouraging the Board to do a better, more thorough job in reaching and articulating its decisions.

However, although I do believe there is some interrelationship, I also believe that efforts to ensure fundamental fairness of the BVA can and should move forward regardless of the outcome of judicial review legislation.

I now turn to my friend and colleague, Frank Murkowski. Do you have an opening statement?

[The prepared statement of Chairman Cranston appears on p. 107.]

OPENING STATEMENT OF SENATOR MURKOWSKI

Senator Murkowski. Thank you, Mr. Chairman. Good morning, ladies and gentlemen. As the chairman indicated, the committee will consider this morning important legislation relating to veterans' benefits and hear testimony concerning the operation of the Board of Veterans' Appeals.

I commend the chairman for the extensive list of witnesses which we have before us. The Congress has consistently rejected proposals, as we all are aware, to index veterans' disability compensation to ensure that compensation rates increase automatically with the increases in the cost of living.

This decision imposes an obligation on the committee and the Congress to ensure each year that legislation is enacted to provide an increase in compensation rates equal to the increase in the cost of living. This hearing, I think, is proof that we take this obligation to American veterans and their survivors in as serious a manner as we should.

We also take seriously our obligation to ensure that our benefit programs for veterans are administered fairly and that the veterans have an opportunity for effective review of decisions with which they might disagree from time to time. The committee's distinguished chairman and I have introduced separate bills which would address in different ways the issue of review of VA decisions.

However, until the legislative process on these bills is complete, veterans must rely—as they have in the past—on the Board of Veterans' Appeals for this review. For that reason, it is critical that veterans have confidence that the BVA operates in a fair and efficient manner. For that reason, I am pleased that the chairman has included the oversight of the BVA on the agenda of the hearing this morning.

The committee will also hear testimony on legislation which was introduced by Senator Cranston, as he indicated, and myself to extend the VA's authority to contract for drug and alcohol treatment and rehabilitation and halfway houses. In April, the Congress received a congressionally mandated evaluation of this program which concluded that the halfway house modality provides a particularly cost-effective treatment alternative for veterans requiring ongoing residential stabilization for treatment of alcohol and substance abuse.

It is vital that the VA use every effective means available to address and eliminate the serious drug and alcohol abuse problems which are experienced by some of our veterans. I commend the dedicated individuals—many of you who are in this room today—who provide these important services to our veterans; and I look forward to their testimony.

It is my intention to review carefully with my staff the testimony presented at the hearing this morning. I appreciate the efforts our witnesses have made to be here at this early hour, and we look forward to the information and opinions which you will provide for the record.

I thank you, Mr. Chairman, and wish you a good hearing.

Chairman CRANSTON. Thank you very much, Frank. We will begin this hearing by asking Mr. Donald Ivers, General Counsel of the Veterans' Administration, to come forward. Mr. Ivers is already at the table. If you would introduce those with you, I would appreciate it.

STATEMENT OF DONALD L. IVERS, GENERAL COUNSEL, VETERANS' ADMINISTRATION, ACCOMPANIED BY HERBERT MARS, ACTING DIRECTOR OF COMPENSATION AND PENSION SERVICE, DEPARTMENT OF VETERANS' BENEFITS; AND DR. DANIEL H. WINSHIP, ASSISTANT DEPUTY CHIEF MEDICAL DIRECTOR FOR PROGRAMS AND OPERATIONS, DEPARTMENT OF MEDICINE AND SURGERY

Mr. IVERS. Thank you, Mr. Chairman. With me at the table on my right is Dr. Daniel Winship from the Department of Medicine and Surgery; on my left, Mr. Herbert Mars from the Department of Veterans' Benefits.

Initially, Mr. Chairman, we would like to thank you for your efforts in introducing many of the pieces of legislation that are here today that were part of our legislative program. We appreciate your efforts on our behalf and on behalf of our Nation's veterans.

We, I think, agree wholeheartedly that our veterans deserve the best and most equitable system possible. While there may be some relatively minor disagreements on the manner in which we achieve those ends, we all are here to achieve the same purpose.

We have submitted a rather comprehensive statement on all of the pieces of legislation before you today; and, therefore, I will just briefly summarize those pieces of legislation and our positions on them.

The first bill today is S. 2267, which is a bill which the chairman introduced on behalf of the Veterans' Administration which would provide for automatic indexing of compensation and DIC benefits to the Consumer Price Index. This bill would also liberalize the clothing allowance, clarify the income exclusion for casualty losses, extend veterans' benefits, provide for administrative offset by the Veterans' Administration and Department of Defense for overpayments to retired military, require claimants to disclose Social Security numbers, and extend authority to operate the Manila regional office for 4 more years.

The second bill is S. 2268, which is another bill that the chairman has introduced on behalf of the Veterans' Administration. This bill would revise eligibility for the plot allowance, permit payment of the headstone allowance where the veteran had prepurchased a grave marker, extend authority for the State cemetery grants program for 5 additional years, and make additional administrative adjustments in the cemetery grants process.

The third bill on this morning's agenda is S. 2011, the chairman's compensation bill, which would index compensation and DIC to the Social Security COLA for one time beginning December 1, 1988. We have commented on the bill and commented in our testimony and have opposed only that aspect of the bill which would not index the COLA to CPI on a permanent basis.

S. 1805, which is a bill to require the Veterans' Administration to ignore for income accounting for pension purposes any payments received from the settlement of the agent orange product liability litigation in New York, has been reported on by us; and as we have stated in our testimony, we have opposed this bill as inequitable to other pensioners and contrary to the philosophy of the pension program, as it addresses a settlement, little different from any other settlement in any other civil action.

S. 2269, the bill introduced by the chairman on behalf of the Veterans' Administration, would delete the statutory requirement that settlements of claims in excess of $1 million on construction contracts be provided for specifically in any appropriations law and would require the Veterans' Administration to notify the Appropriations Committee of such settlements.

Passage of this bill would reduce the amount of interest that has accrued on large claim settlements in the past and make, we believe, a much more effective settlement process.

S. 2306, another Veterans' Administration proposal introduced by the chairman, would authorize the Veterans' Administration to use multiyear contracts in certain cases in acquisition of supplies and services.

S. 2105, which is the chairman's bill to extend VA's authority to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other community-based facilities for 4 more years, is a bill which we have commented on in our lengthy testimony and also previously in a letter to the chairman.

We have supported the bill, but have requested certain modifications introduced through a separate bill, on behalf of the VA. Those modifications indicate our satisfaction and pleasure with the contracting program, but would make some minor additional changes over and above those suggested by the chairman.

Mr. Chairman, this concludes our brief summary testimony, and we would be happy to answer any questions that the committee may have.

[The prepared statement of Mr. Ivers appears on p. 114.]

Chairman **Cranston**. I appreciate your thanks to us regarding the VA proposed legislation. Not only have we introduced your program this year, but we are trying to provide a hearing on virtually all of it, even though a substantial amount of the package did not arrive until May and one bill in June.

Based on the testimony received for this hearing, last month's hearing on education legislation, and next week's hearing, we will see what portion of your program enjoys wide support in the committee and around the committee, and what we can do to move forward with what does have adequate support.

Don, I would appreciate it if you would provide for the record your written response to the points made by Kenneth Feinberg on pages 7 through 9 of his written testimony for today's hearing regarding S. 1805. We would be interested in your comments on that.

[Subsequently, the Veterans' Administration furnished the information which appears on p. 139.]

Chairman CRANSTON. I have quite a few written questions I will be sending to the VA, but I won't pursue matters with you further at this point. I appreciate your coming to testify before us today. Thank you.

Mr. IVERS. We will be happy to respond to those questions, Mr. Chairman. Thank you.

Chairman CRANSTON. Thank you. Our next witness is Kenneth Eaton, Chairman of the Board of Veterans' Appeals. Thank you, Ken, for being with us, and please introduce those who accompany you.

STATEMENT OF KENNETH E. EATON, CHAIRMAN, BOARD OF VETERANS' APPEALS, VETERANS' ADMINISTRATION, ACCOMPANIED BY ROGER K. BAUER, VICE CHAIRMAN; RONALD AUMENT, SPECIAL ASSISTANT TO THE CHAIRMAN; AND JAN DONSBACH, LEGAL ASSISTANT

Mr. EATON. I sure will. Mr. Chairman, on my right is Roger Bauer, Vice Chairman, second on my right is Mr. Jan Donsbach, Legal Assistant, and on my left is Mr. Ronald Aument, Special Assistant. Senator, we are here today to try to get a better understanding for you of the operations of the Board of Veterans' Appeals, and we would like to be able to explain any problems you have having to do with the Board.

It seems that several things have come up recently. I would like to preface my remarks with just a comment or two about the Board and its operations.

We will hear a lot, I am sure, about production and goals and that sort of thing, and quality. I would like to assure you that, while all these things are important and they are management tools, the real heart and soul of the Board of Veterans' Appeals is determining whether a case should be allowed or denied or remanded.

In my opinion—and I feel very strongly about this—there is no interface there between the two. They talk about hurried decisions or the quality of a decision.

The first thing a Board member does is decide what should be done with a case, as far as whether it should be allowed or denied. He then focuses on such things as how much time he is going to take to prepare the decision, how much the underlying reasoning is going to be described, how well it is going to be explained. There is no correlation between the two.

So, any of this talk about hurried decisions or that sort of thing, or bonuses or any of that, has nothing to do with whether a case is going to be allowed or denied; and I would like to make that particularly clear because I think there is a misunderstanding along that line.

Other than that, I think I had one or two little points I wanted to cover; and again, they really have to do with independence. The Board members are very independent when it comes to making a decision about a case.

There seems to be a misunderstanding about consistency, and I would like to explain that because there is going to be a variation between Board members' opinions as to whether a particular case should be allowed or denied. That is as it should be; they are not going to always agree.

There is going to be a difference of opinion even on the same facts of a case, and that is why you have dissents and why you have expanded panels and all that sort of thing. There is nothing wrong with that.

We never tell a Board member how he should decide a case. Now, we are very consistent having to do with what the general rules are. Take, for example: How do you count income for pension? There are certain rules you go by.

We follow those rules consistently. We don't have any inconsistency on the board having to do with the general rules that we apply; but that doesn't mean there are not going to be, if you will, inconsistencies among Board members as to how that will apply to the facts of the case.

There seems to be some problem there; and I can assure you that, if you try to tell them they have to go a certain way based on the facts, then you are affecting their independence, and we do not do that.

With those remarks, I am willing to take whatever questions you may have.

Chairman CRANSTON. All right. Thank you very much.

[The prepared statement of Mr. Eaton appears on p. 140.]

Chairman CRANSTON. The majority of the veterans' organizations who are testifying at today's hearing believe that bonuses awarded to Board members create a problem with the perception but not the reality of fairness. And the majority think the bonus is tied to production quotas and ought to be eliminated.

In light of yesterday's article in the Post, I gather you agree?

Mr. EATON. Unfortunately, the timing of that was not too good, but that is right. We have discontinued the bonuses. There were a number of factors, but the primary factor really was an interpretation—a recent interpretation—of OPM guidelines, which tells us that the type of formal appraisal system that they require for the type of performance award we have doesn't fit.

So, we are not supposed to be doing it that way. So, we have discontinued that. We will examine other possibilities and alternatives because we do like to encourage outstanding performance, not hurried work as they say; but we do encourage outstanding performance, but we are unable to do it any longer along those lines. We have terminated that.

Chairman CRANSTON. Have you abolished the practice of awarding bonuses to Board members generally and totally, or is it to be abolished only with respect to production quotas?

Mr. EATON. No. We tried always to involve other matters, other than just production quotas; but the entire bonus system has been discontinued. There are a few other types of things a person can do, but they have nothing to do with the regular work of the Board.

If they are doing something outside of the regular work of the Board, it is still possible to recognize them for that, but not for the regular work.

Chairman CRANSTON. What alternatives to bonuses have you developed or are you exploring to motivate and encourage Board members to produce timely, quality decisions?

Mr. EATON. We have given it some thought, but it is too early in the game. I have always thought that we would continue the bonuses we have had in the past; so I haven't really had time to give that too much thought. We will explore other possibilities.

I will talk with the people in personnel and so forth and see if we can come up with something. Obviously, the problem is the perception.

Chairman CRANSTON. Would you report back to us when you develop some alternatives?

Mr. EATON. We sure will.

[Subsequently, the Veterans' Administration furnished the following information:]

The Chairman will be looking into alternative methods of recognizing high performance among the Board Members. At this time it is premature to identify what avenues will be pursued. However, he will be working with the General Counsel and Office of Personnel and Labor Relations to determine if any recognition would be appropriate and what procedures should be followed. The Committee will be kept informed.

Chairman CRANSTON. When was the bonus system started?

Mr. EATON. Oh, my. I know it was in existence when I first arrived 26 years ago. I am talking about for Board members now; and of course, it has always been true for attorneys as well.

Chairman CRANSTON. It was going on at that time?

Mr. EATON. Yes.

Chairman CRANSTON. In response to my prehearing question, the one regarding the financial and personnel resources available to BVA, you indicated that the BVA operations would be enhanced by "the addition of a few positions and other professional staff who could assist Board members in their review of appeals."

I would appreciate it if you would provide the details on these staff additions.

Mr. EATON. We will do that for the record.

Chairman CRANSTON. Fine.

[Subsequently, the Veterans' Administration furnished the following information:]

We have previously described our quality review program, which has received increased attention within the BVA over the past few years. This quality review program has always been staffed and otherwise supported from existing resources. Both the first and second tiers of the quality review process have been staffed by seven to eight attorneys that are detailed on a rotating basis from regular Board Section assignments. While this rotation practice is desirable from an experience viewpoint, there are no budgetary provisions for replacing the lost personnel resources at the Board Section level during the periods of detail. Consequently, we have absorbed an approximately seven to eight FTEE loss to support our quality review effort. Additional FTEE would provide specific support for this quality review effort.

The remaining additional staffing that we believe would contribute to improved BVA operations would include two physicians and approximately six to seven senior attorneys. These staff additions would provide additional support and assistance in Board Member reviews of all BVA decisions prior to dispatch. At the current service level of staffing, this is complicated due to Board Member absences for Travel Boards, formal hearing attendance, training requirements, and normal leave usage. The improvements we would anticipate as a result of these proposed staff additions are entirely of a qualitative nature and can be summarized as follows: (1) more thorough Board Member review, and (2) more permanent and institutionalized support for the BVA quality review process. Using the BVA average annual salary as a projection base, the estimated annual cost of the 16 FTEE staff addition is approximately $683,000 beginning in Fiscal Year 1990.

Chairman CRANSTON. Do you believe that more physicians and other professional staff members other than those just discussed need to be added to aid the BVA in raising the quality of decisions?

Mr. EATON. There is always a balance to be gained, and we have been putting more and more emphasis on quality in these further reviews and on additional doctors and that sort of thing. I believe there is still room for improvement, and additional people can help.

It is a blend, like everything else; you try to balance things so you can get the cases out. You know, 42,000 cases is a lot of cases; and we don't want to get very far behind in the backlog because then we really get criticized, you know, if the veteran has to wait too long.

While I think we are doing a good job—a very good job—now, and I am very proud of the Board of Veterans' Appeals and what it is doing, I can't say that a few additional people here and there wouldn't help us to improve the final product.

And when I say that, I am not now talking about the decisions to allow or deny, you see. I am talking about a little better explanation on the decision—something like that.

Chairman CRANSTON. In your response to prehearing question No. 3, you indicate that the BVA response time, that is, the time during which the BVA, rather than the regional office or the appellant responsible for the case, is 134 days for the first half of fiscal year 1988, a slight increase over fiscal year 1987, during which the BVA response time was 128 days.

Am I correct that the actual average time it takes for a veteran to get a decision, once he or she files a notice of disagreement with the regional office's decision, is currently 421 days, or about 14 months?

Mr. EATON. Let me check that. Oh, I see. Yes, 412 days; that is including all the processing and including some time incidentally that really could be attributed to any delays by the veteran.

Chairman CRANSTON. We are using 134 plus 287, which adds up to 421 days. Is that correct?

Mr. EATON. I would have to check the mathematics. I have something right here on question No. 3. It looks like total elapsed time of 412. Did we add it wrong or something? I don't know.

Chairman CRANSTON. You were using 125 rather than 134.

Mr. EATON. Oh, yes. That is the answer. As a matter of fact, I recall now. Right now, we are operating at 125 whereas that list had 134. Maybe that is part of the difference.

Chairman CRANSTON. Even that 421 days does not take into consideration the length of any decision time by a remand, as I understand it.

Mr. EATON. Oh, no.

Chairman CRANSTON. And that occurs in over 20 percent of the cases.

Mr. EATON. That is right; well, right now, maybe 19, but right in there.

Chairman CRANSTON. And then, each remand takes around 100 days to the decision time. So, doesn't that mean that at least 20 percent of all cases take over 521 days, almost 1½ years? And because it is unknown how many cases are remanded a second or a third time, some unknown percentage of cases takes well over 600 days before final decision?

Mr. EATON. The only part of that that I would argue with is that I think, of those that are remanded, a fair number of those never come back. They are allowed in the field; and, therefore, the processing time does not increase on those, you see. But it is true of those that come back; you can add that on. As far as that veteran is concerned, it takes that long.

Chairman CRANSTON. As to the decisions that are brought to your attention because an interest has been expressed by the individuals on your personal signature list, I take it that the decision would be a unanimous one. Is that correct?

Mr. EATON. It would have nothing to do with that. It could be that there was a dissent and an expanded panel; I might have voted on it. All of that is done before this correspondence reaches me.

Chairman CRANSTON. But if there was a dissent, it would come to your attention?

Mr. EATON. Yes, but it wouldn't have anything to do with this personal signature list thing. There is no connection between the two.

Chairman CRANSTON. I will let counsel ask you a question.

Mr. STEINBERG. Mr. Eaton, the point the chairman is trying to clarify is that the only reason for referral being the personal signature list would be true only in cases which were unanimous because, if there were a dissent, the case would have reached you previously for another reason.

So, as the only reason being the signature list, the case would come to you, would be unanimous at that point. Is that correct?

Mr. EATON. No, I don't agree with that. The routines are not so well defined that the clerk downstairs is going to say, well, this one has already been seen by the chairman. There is just the chairman's signature list. If Senator Cranston asks for a case here on the Hill, all they know is that I want to see it; and they are going to send it back up through me on the correspondence.

It has nothing to do with what kind of decision it is; it will come back up. I see your point—that I shouldn't have to see it again, but I will.

Mr. Steinberg. But you would—might have seen it earlier if it was a divided panel.

Mr. Eaton. Yes, right. I would have.

Mr. Steinberg. But if it is the first time you are seeing it, it would have been a unanimous case by definition?

Mr. Eaton. Oh, I see. Yes.

Mr. Steinberg. All right.

Chairman Cranston. Upon reviewing such a case, have you ever asked the Board members to reconsider their decision or have you returned the decision to an expanded panel?

Mr. Eaton. No. Now, let me clarify that. I have read a decision on occasion where it appears that it is not as well explained as it should be; and I will on occasion, if there is some type of an error in the writing or something, if I can catch something, I will ask them to make a correction. But I would never ask them to change their opinion.

Chairman Cranston. When the Board section is originally deciding a case, are the Board members and staff attorneys aware that it is a case in which someone on your personal signature list has expressed an interest and that you will be personally reviewing the case and signing the transmittal letter?

Mr. Eaton. They probably could be aware of it if they pay attention to it, but I would suggest that 90 percent of them would not think of it or be aware of it. But they could make themselves aware of it if they wanted to. They usually don't; they don't care about that.

Chairman Cranston. Is it your position that the existence and use of your personal signature list does not affect the substance or outcome of a case, but only ensures that there is one more layer of review, and perhaps a more well articulated and reasoned opinion?

Mr. Eaton. Absolutely.

Chairman Cranston. Since the individuals on your current list are not limited to members of the House or Senate Veterans' Affairs Committees, would you please explain your criteria for putting a Senator or Representative on your personal signature list?

Mr. Eaton. This has, of course, been an ongoing thing for many, many years; and the only thing I can explain about that is that on a rare occasion some Senator or Congressman expresses some unusual interest in the Board and its operation. And for that reason, I might decide to put him on that list because I want to see what he gets because he has shown such an interest.

So, I think that it did happen that there were about two on my list that were not in the committee; and that was the reason, they had shown some special interest, and I wanted to be apprised of what they were getting.

And then, it just sort of carries on after that, and I don't get around to removing them.

Chairman Cranston. Given that in cases where independent medical expert, IME, opinions were obtained, the allowance rate was significantly higher than average—for instance, in fiscal year 1987, 38.2 percent of cases with IME opinions were allowed, versus a 12.8 allowance rate in cases without IME opinions—is it an accurate conclusion, and why, that the veteran is better served by requesting and obtaining an IME opinion?

Mr. EATON. First, I would say yes, but I would want to qualify that a little bit. Obviously, those cases are the ones that the Board members think are very difficult and they want to make sure of the answer, you know, on a very complicated medical problem, and they send them in.

In those particular cases, there is going to be a high-allowance rate because of the closeness of the problem. If you continued to expand the number of IME's too much, then the allowance rate would dwindle down, the more you expanded it—if you understand what I mean—because you would be expanding it to cases that were not quite so close.

But that does not mean that we should not encourage more IME's because I do encourage them all the time with the Board members; a lot of times, they say, well, we are sure we know the answer already, and they don't do it. But I do strongly encourage IME's whenever possible.

And if the service organization pushes hard for it, we do it in every case they seriously request it.

Chairman CRANSTON. In response to my prehearing question 21(c), you stated that the Chairman reserves the right to authorize a request for an IME opinion at any time. Under what authority do you exercise that right?

Mr. EATON. That is a good question. I don't know of the authority other than that our own rules have always been set up that the request for an IME is under my signature. Now, I do delegate that generally to the chief members of the sections, and they go ahead and sign off; but they sign off my name, not their own.

Therefore, I am the one who is sending out that IME although they are doing it for me. So, from that standpoint, since they are all under my signature, I figure I can sign my own name once in a while, too, and I figure that is my authority for doing it.

Chairman CRANSTON. You also have the right to overrule the section's request for an IME opinion?

Mr. EATON. Since it is my signature, yes, I would say I would. It is an extremely rare situation that that would ever happen; but, yes, I would say I have that authority.

Chairman CRANSTON. Has that ever happened?

Mr. EATON. I can think of one example where there was a disagreement between two chief members as to what the phrasing should be—first of all, whether there should even be an IME; and I said, yes, let's do the IME. Then, there was a disagreement as to what the wording should be, and I couldn't get them to agree on it; so I finally settled it.

Chairman CRANSTON. What is your rule, if any, in composing the actual request for the IME opinion?

Mr. EATON. Normally, it is not composed by me.

Chairman CRANSTON. If there is dissent within the Board section as to how the request should be worded, how is that resolved?

Mr. EATON. Normally, the chief member of the section just does that. It is administrative detail; it is not a vote. We don't have votes on the Board as to whether there is an IME or not. You vote to allow or deny or remand, but you don't vote for an IME. That isn't the way we have been operating.

If the chief member wants to do it, he does it. If I want to do it, I do it. We try to encourage it as much as possible. So, if one person wants it, we should do it.

Chairman Cranston. All right. Counsel has a question.

Mr. Steinberg. Does that mean that any of the three members of that panel has the right to request an IME if there is not a vote?

Mr. Eaton. Well, I think you have got me there. I don't recall a particular situation, but I could visualize what you are driving at; the answer might be a little awkward.

Let's suppose there is a law member who thinks that there should be an IME, and the chief member thinks that there should not. Normally, the chief member says I don't think we should do it; so we are not going to do it. So, in a sense, that law member is just overridden.

Or it could be in theory that the doctor and the law member could agree to an IME, and the chief member doesn't want to do it; and I think the way we stand now the chief member usually runs the show. There is no vote.

Maybe we should change that.

Mr. Steinberg. Would you look into that and also give us a copy of the instruction that specifically provides for that? As I understand, what you are suggesting is that the delegation that you have made is in effect to the chief member and it is the chief member who makes that decision.

Mr. Eaton. Right.

Mr. Steinberg. And I assume that it is an option to the other two panelists who may, in your hypothetical, both agree that there should be an IME, for them to bring that to you or to the vice chairman?

Mr. Eaton. Of course. And if a law member ever came to me and said 'they are not getting an IME in this case and I think they should, I would probably order one.

Mr. Steinberg. If you would provide the requested information, please?

Mr. Eaton. All right.

[Subsequently, the Veterans' Administration furnished the information which appears on p. 149.]

Chairman Cranston. In your answer to my prehearing question 21(g), you stated that a BVA decision as to whether or not to seek an IME opinion is final and not subject to change, yet an appellant or his or her representative could write to you as Chairman and ask that you request an IME opinion, notwithstanding the so-called final nonappealable BVA decision.

These two statements seem sort of contradictory. How do you reconcile that?

Mr. Eaton. The way I would explain that is that, at the time that decision was made, they decided not to do an IME. Now, that decision is final. However, if the person comes back requesting further review and reconsideration and that sort of thing, it is not final as to getting it at a later date; but it is final as to whether or not they should have gotten it at the time they made that initial decision.

That may seem a bit picky to some, but it is important to us because it has to do with effective dates and the finality of a decision and that sort of thing. But we frequently order an IME after the three Board members made their decision and decided not to get an IME; and the decision goes out denied, and it comes back and I say, yes, let's get an IME. And we do it, anyway.

Chairman CRANSTON. How is the option to petition the Chairman for an IME, notwithstanding the Board panel's decision, currently publicized to claimants and service representatives, especially when the decision denying the request is contained in the decision document?

Mr. EATON. I am not sure I understand that question. Ordinarily, if we deny the IME, we put that in the decision, which you just said. What other situation would there be that we need to announce? I am not sure.

Chairman CRANSTON. Jon Steinberg.

Mr. STEINBERG. Fine. I think the burden of the Chairman's question there is: How does the claimant or the claimant's representative know that there is an option to appeal to the Chairman to get an IME after the case has already been decided by the Board?

I take it that there is no such statement in the decisional document?

Mr. EATON. No.

Mr. STEINBERG. And there is nothing in any BVA regulation that would advise them of that option, is there?

Mr. EATON. No, not to my knowledge.

Mr. STEINBERG. So, you have here a procedural right of which only a select number are aware, those people who happen to be aware of that.

Mr. EATON. I see. I suppose that is true. They are all aware of the procedure for requesting reconsideration, not the procedure for the IME, you understand; but the procedure for reconsideration, everyone is aware of that. Well, I say that everyone is—I think they are.

And while they may not specifically know about requesting an IME, they know about requesting reconsideration; and then we will look to see whether IME should be done. But your point is still well taken.

Some people will not know that they could ask me for an IME after the decision has been rendered.

Mr. STEINBERG. Would you look into two things? First, the possibility and the desirability of amending your regulations to specify that there is that appeal to the Chairman if an IME request is denied; and, second, whether or not, upon the denial of an IME, the claimant or the service representative or both should be specifically advised of their right to petition the Chairman.

Mr. EATON. It comes to my mind now that we do have a regulation as to all motions of any kind that they have the right to submit them, and that we will make a decision on. I suppose that could be included as a motion for whatever it might be; that is a motion for an IME.

But as far as apprising them, you know, notifying them that they have that option, I don't know how we would do that. We would have to put that in the regulations. We will have to look into that.

Mr. STEINBERG. Would you look into that and report back to us?

Mr. EATON. We sure will.

Mr. **Steinberg**. Thank you, Mr. Chairman.

[Subsequently, the Veterans' Administration furnished the following information:]

The regulations governing Board practice do place appellants on notice that, with respect to reconsideration of decisions, the Board may secure additional medical opinions (38 C.F.R. § 19.187(a)). The availability to the Board of independent medical experts' opinions and appellants' right to request them are matters of which appellants have notice by virtue of 38 C.F.R. §§ 19.177 and 19.178.

Chairman **Cranston**. Strom, do you have an opening statement?

OPENING STATEMENT OF SENATOR THURMOND

Senator **Thurmond**. Mr. Chairman, it is a pleasure to be here this morning to consider cost-of-living adjustment legislation, agent orange settlement legislation, oversight of the Board of Veterans' Appeals, and several related matters. Mr. Chairman, I appreciate your interest and willingness to hold hearings on each of these measures.

I am pleased to be a cosponsor of the Veterans' Compensation Cost-of-Living Adjustment Act—one of the bills before the committee today. This bill provides a cost-of-living adjustment for veterans receiving disability compensation and for survivors of veterans receiving dependency and indemnity compensation. Effective December 1, 1988, the increase would be the same percentage as the adjustment to be paid to recipients of Social Security benefits. Mr. Chairman, as members of this committee, we have a duty to examine veterans' benefits each year to ensure that they adequately provide for the men and women who have worn the uniform.

Mr. Chairman, I am also pleased that we will be receiving testimony on the agent orange litigation settlement legislation and the operation of the Board of Veterans' Appeals.

I want to thank our distinguished witnesses for being with us today. At this time, I have a couple of questions I would like to ask.

Chairman **Cranston**. Why don't you go ahead?

Senator **Thurmond**. All right, Mr. Chairman, thank you.

Chairman **Cranston**. I am not finished, but I will yield.

Senator **Thurmond**. Thank you. Mr. Eaton, do you have an explanation for the increase in the percentage of cases remanded back to the regional offices?

Mr. **Eaton**. We have come up with a number of possibilities, but the fact of the matter is that we are not quite sure what the reasons are. There are all sorts of possibilities. I would like to emphasize the fact that we must not be doing it wrong because our allowance rate following a remand is as good now as it was when our remand rate was lower.

Do you understand what I am saying? In other words, we remand a certain number of cases, but they are still allowing 25 percent even though we are remanding more. So, it makes me think that remands are just as valid at 20 percent as they were at 15.

But as to the reasons that we have sent some of them out; they get a little bit complicated, but there are some new types of issues that have come aboard that have called for more inquiry. These PTSD cases are just one example that we frequently have to ask for another examination and further documentation and diagnosis as to whether the fellow has PTSD or not. That is just one example.

Senator THURMOND. Do you keep data on the reasons cases require remanding?

Mr. EATON. We have, of course, data as to how many remands; but as to the different reasons, I would say no. We have done a few studies along that line, but we generally do not have the data just readily available.

Senator THURMOND. Have you worked with the DVB to inform them of steps they can take to reduce the number of remands?

Mr. EATON. Yes, we have been working with them recently on a study having to do with this increase in remands and trying to work out the reasons and whether or not there is something they can do.

They suggested they order more exams so we wouldn't remand so much for exams; but the problem with that is that, for every one that they order, there are two or three times we do not order another exam and they would be getting more exams than they need if they started just wholesale ordering of exams every time they turned around.

Senator THURMOND. There have been suggestions that veterans are harmed by the suggestion of BVA's physician's opinions or judgments from those of the examining physician. What is the difference in the role of an examining physician and the physician on the BVA?

Mr. EATON. Yes, and it is the same thing with the physician on the rating board, as opposed to the physician who examines them. It is the same idea. When the doctor takes on the role on the rating board or on the Board of Veterans' Appeals, he becomes an adjudicator; he is no longer an examiner.

And while he is still focusing on the medicine involved, he is doing it from a different perspective; and over the years, it has been pretty well established that you need to separate your treating physician and your examining physician from your adjudicating physician; and I believe there are very good reasons for that.

Senator THURMOND. Is it your opinion that the way these matters are handled now is the best, most practical, and fairest way to handle them from the standpoint of the veteran and the taxpayer?

Mr. EATON. Senator, it is my opinion that both the Department of Veterans' Benefits and the Board of Veterans' Appeals do everything they can to allow these cases. A lot of people don't seem to appreciate that, but the Department of Veterans' Benefits will look at a case three and four and five times before they will let it come to the Board of Veterans' Appeals, trying to find ways to allow it so that the veteran won't have to appeal it to us.

Then, after they get through and can't find sufficient evidence, then we look at it; and we try as hard as we can to find a basis for allowing it. And I honestly believe that the veteran gets a very fair shake from the system we have now.

Senator THURMOND. And do you feel that the way you handle it saves time for all concerned, saves money for all concerned?

Mr. EATON. Yes, sir.

Senator THURMOND. And is completely fair to the veteran?

Mr. EATON. Yes, sir. I do.

Senator THURMOND. That is all. Thank you, Mr. Chairman.

Chairman CRANSTON. Thank you, Strom. In response to my prehearing questions, the Paralyzed Veterans of America stated that one drawback to obtaining independent medical expert [IME] opinions is that it is a very time-consuming process. How long does obtaining an IME opinion generally take?

Mr. EATON. I never thought of it being all that long. I would have thought 30 to 60 days. Just a minute. My impression is that it runs around 60 days, but let me provide that for the record. I know we have that.

[Subsequently, the Veterans' Administration furnished the following information:]

The average length of time for when the BVA dispatches the letter of request to the Dean of the Medical School until it receives the opinion from the specialist averaged 153 days in Fiscal Year 1987.

Chairman CRANSTON. In your opinion, does the benefit of obtaining an IME opinion generally outweigh the detriment of the delay?

Mr. EATON. Oh, yes.

Chairman CRANSTON. In response to prehearing question 33(a) concerning the BVA being prepared and qualified to rule on the correctness of Agency interpretations of its regulations and of applicable laws, you state that assuming that there is a grant of authority to establish a specialty section to decide these issues you believe the BVA would be qualified to rule on the correctness of interpretations of agency regulations by the Administrator or General Counsel. Your statement raises several questions I would like to put to you.

First, do you believe that only one specialty section would be necessary to handle this task?

Mr. EATON. Well, that is a very good question. I am not thinking of a section the same as when I talk about the 21 sections of the Board. That is three members and some staff, you know; and there is no way that a section that size could handle this problem.

I only meant a special group. We might have used the term "section" a little loosely there. I was thinking of a much larger section to handle it; but if I had my druthers, I would kind of like to keep it in one group, even though it would be larger.

Chairman CRANSTON. How many members and staff do you envision this as having?

Mr. EATON. I think we estimated something in the neighborhood of 30 people in that. Thirty people is what we figured we would need to handle that sort of thing.

Chairman CRANSTON. How would you break that down? How many members and how many staff?

Mr. EATON. We might only have three members. It is mostly staff work that would have to be done.

Chairman CRANSTON. Would all the members and staff have to be attorneys?

Mr. EATON. Yes, I believe they would.

Chairman CRANSTON. What would the annual cost of such a specialty section be?

Mr. Eaton. I had better amend that just a little bit. There would be some secretaries and that sort of thing involved. Now, what was the next question?

Chairman Cranston. What would the annual cost of that be?

Mr. Eaton. We can provide that figure. As a matter of fact, I am sure it is very quickly available. We will provide it for the record.

You understand that we have not done this before? And it would take a little training and practice to get into the feel of doing that sort of thing; but we are making the estimates along that line.

Chairman Cranston. Could you give us a budget estimate for the record?

Mr. Eaton. Yes, we sure will.

[Subsequently, the Veterans' Administration furnished the following information:]

The Agency is currently preparing cost estimates for the establishment of a special BVA group or section that would be handling appeals involving regulatory challenges. This information will be provided as soon as it becomes available.

Chairman Cranston. If you had your druthers, would you develop this special section; or would you simply expand and beef up the BVA itself?

Mr. Eaton. It would depend on whether or not we had that responsibility. If we have that responsibility of reviewing the validity of regulations, then I would prefer that special section.

Chairman Cranston. How many cases do you think it would handle in a given year?

Mr. Eaton. We did do an estimate on that. I think we thought it might do maybe 500 a year. The average section, which is much smaller, does something in the neighborhood of 2,000 in a year; but these would be very specialized cases.

Chairman Cranston. Does that 500 cases differ from the number of cases you estimate would be appealed to court under S. 11, legal questions?

Mr. Eaton. Much different. We don't anticipate nearly as much traffic, if you will, from this type. It is supposed to be restricted, as I understand it, to a very legal type of a decision and not so much on the facts; and we are just guessing.

Chairman Cranston. On legal questions?

Mr. Eaton. Yes. We think that is what that bill contemplates.

Chairman Cranston. How would it differ?

Mr. Eaton. How would it differ?

Chairman Cranston. Yes.

Mr. Eaton. Of course, this is all just estimates now; but as I understand it, every case would have a decision on the facts. And then, in addition, we would have a separate decision where there is a point of law that would have to be directed, a point having to do with the challenging of regulation or the validity of a general counsel opinion. Those would be separate.

Chairman Cranston. That would be the same as the number that would be appealed to court under S. 11, presumably, on legal questions.

Mr. Eaton. I don't know. I get the impression it would be different, but I may be mistaken. It is very difficult to know how these things are going to fall.

Mr. Steinberg. What we are trying to find out is whether or not, in your estimates of the number of cases that would be appealed to court on legal questions under S. 11, this same 500-case assumption was made.

Mr. Eaton. I see. Yes, as long as you are just restricting it to legal, sure. Then it would be the same. I get your point.

Chairman Cranston. What advantage do you believe there would be for a claimant in having BVA determine the validity of VA regulations when the VA would almost certainly appeal to court any BVA decision overruling the general counsel?

Mr. Eaton. I really don't have an opinion on that. Would you repeat the question?

Chairman Cranston. Yes. What advantage do you believe there would be for a claimant in having BVA determine the validity of VA regulations when the VA would almost certainly appeal to court any BVA decision overruling the general counsel?

Mr. Eaton. This is off the top of my head, but the only advantage I would think the claimant would have is at least he has somebody now on his side, where before he didn't. That would be the advantage to him.

I would agree that virtually every time the BVA thinks the general counsel is wrong, the general counsel is going to want to take it to the court to see whether we are right or not; and the fact that the BVA agreed with the claimant is sure not going to hurt his case. That is the only thing I can think of.

Chairman Cranston. Would the specialty section under such circumstances wait until the regular Board section had determined the facts in order to avoid ruling on academic questions or on legal questions unnecessarily when the claimant might have prevailed on the facts, anyway?

Mr. Eaton. I am afraid I have to say, Senator, that we haven't looked that deeply into the mechanics of the situation. I would assume that we would let the factual decision be made first, but we haven't given it a heck of a lot of thought, to be honest about it.

[Subsequently, the Veterans' Administration furnished the following information:]

> At this point, it appears that it would be preferable for the Section to review the appeal. If the case could be allowed nowithstanding the regulatory challenge, then the Section could proceed to allow. In these instances, it may be that the challenge could be considered moot. On the other hand, if the Section proposed to deny the case, it would have to be referred to the Litigation Group for a decision on the law and a possible court challenge before one could proceed with an assessment of the factual merits.

Chairman Cranston. How long would you anticipate it would take for such a specialty section to make a final determination on the validity of regulations?

Mr. Eaton. Of course, it would vary depending upon the particular case, obviously; but they would have a group focusing on a case, and I would think that it might take two or three people several weeks or a month to do one case.

Mr. Steinberg. When you responded as to the number of cases that this specialty section would handle, I believe you said 500, whereas a regular section would handle 2,000, which suggests that you would think that the average case would take about four times as much time.

Mr. EATON. No, sir. I don't think so. Don't forget we are talking about this particular section having 30 people, whereas the other only has 10. So, that 10 is doing 2,000, and the 30 are doing 500. So, instead of four times, I think it is more like 10 times. Do you follow my logic there?

Mr. STEINBERG. And your estimate is that you would have a delay of only a matter of weeks?

Mr. EATON. I didn't think the question was on delay.

Mr. STEINBERG. No, I am sorry—the amount of time to make a legal determination.

Mr. EATON. I would think that two or three people could focus on it; and within a month—3 or 4 weeks—I have no idea at this point. I am guessing, but it is possible. If it took two or three people a month to handle one case, and if you have 30 people and you divide that up, you might be able to get about 500 cases done in a year. That is off the top of my head, too.

Mr. STEINBERG. Two or three you are talking about are the member and several staff members?

Mr. EATON. Oh, I am really thinking just of the staff.

Mr. STEINBERG. Just the staff? You are not thinking about member time in that regard?

Mr. EATON. No.

Mr. STEINBERG. Well, they are all going to decide all cases; so, you are talking about the members deciding something like 1½ cases a day on legal questions that were complicated enough for a claimant to have raised them.

Mr. EATON. I get your picture.

Mr. STEINBERG. It would appear to us, given the amount of time that the general counsel testified it generally takes for the general counsel to have prepared his interpretation and his analysis, that that is kind of optimistic.

Mr. EATON. I think you may be right. Perhaps it would take longer than that. Of course, we would have all that staff study before that member looks at it; but still, I think you may be right. It may take longer than that just for the Board member, even though all the staff work has been done. That is a good point.

Mr. STEINBERG. In giving consideration to that and giving us a response for the record, you might want to look at the number of cases that the average appellate court—for example, the DC Circuit Court, or we are very familiar with the ninth circuit—handles in the course of a year. In both of those circuits, I believe you have more than nine circuit judges, each of whom has at least two law clerks.

I think you will find that the total number of cases that the ninth circuit handled is about 5,000 per year, with 28 judges and a staff of 300, which proportionally is very close to your estimate of the resources you would need for 500 cases.

It would be helpful if you would look into that matter and see whether there is any comparability there.

Mr. EATON. I sure will.

Mr. STEINBERG. Of course, many of their questions might be extensively more complicated—no question about that—than some of the legal questions you might have. There might be some guidance available there, or in looking at the new Federal circuit, for example, which does handle perhaps more comparable cases in terms of Federal copyright and patent claims and claims against the United States. Maybe that would be more comparable.

Mr. EATON. We will look into that. There is one other point about that. We might get some repetitive situations. I don't think we can just dismiss them because they are very similar or almost identical to a prior challenge on a legal point. And if we get repetition in that 500, it will be a lot easier the second time around.

Mr. STEINBERG. Thank you, Mr. Chairman.

Chairman CRANSTON. In response to prehearing question 24(b), you state that "While an appellant has a right to a hearing, there is no right to a hearing before a travel board." But you also note that such a hearing may be permitted under applicable regulations.

As you know, the BVA regulation in 38 CFR 19160, BVA rule 60 states: "A hearing may be held in one of the following places at the option of the appellant: (a) before a section of the BVA in Washington, DC; (b) to the extent scheduling permits, before a traveling section of the BVA during regularly scheduled visits to VA facilities; and (c) before appropriate personnel in the VA regional office acting as a hearing agency for the BVA."

How often are requests by claimants or their representatives for hearings before a traveling board section denied?

Mr. EATON. As far as we are concerned, it would be very rare. Occasionally, we have a situation where we hear about it, that they are being turned down at the local level for the scheduling. And if we hear about it, we will make some sort of an arrangement to see that they get that hearing.

But we have always reserved the right to say that they cannot force a travel board hearing. There is the regional office hearing and the Washington hearing, but not the travel board; but as a practical matter, we always try to bend wherever we can to give them a hearing when they want one, when we are there for that visit.

Chairman CRANSTON. Counsel has a followup question.

Mr. STEINBERG. That request would come in at the regional office level. Is that correct?

Mr. EATON. Yes.

Mr. STEINBERG. And you say "if you hear about it." What instructions has the BVA issued to the regional office to let the BVA know if the docket is filled for that traveling section, so that either that section's time can be extended in that city, or other arrangements can be made so that that request can be accommodated?

Mr. EATON. I have talked to adjudication officers from time to time at their meetings to explain our procedures. The trouble with that is that, if you advertise that too much, you are going to get more than you can handle. We have very limited resources for these travel boards, and it wasn't so many years ago that we didn't even have travel boards.

We have expanded them over the years, and now we have over 50 of those travel boards a year, I think it is. But each time a travel board goes out, that is three members who are not available here in Washington to work on cases. You know, nobody likes to talk about the volume of our work or the resources available to do it, but that shortens up the number of people we have to review those cases and get those cases out.

[Subsequently, the Veterans' Administration furnished the information which appears on p. 156.]

Mr. STEINBERG. Mr. Eaton, is it one of your notions about fairness and justice that it be evenhanded?

Mr. EATON. Yes, indeed.

Mr. STEINBERG. And that individuals have an equal opportunity to obtain that justice?

Mr. EATON. You are referring to the right to a travel board?

Mr. STEINBERG. What I am suggesting is that, if you agree that those are fundamental to your concept and to the basic concept in our democracy of fairness and justice—that is, that it be evenhanded and that people have equal access to it—I don't understand how you can have a system where by one of three options—four actually, because it is an option of an individual to have no hearing whatsoever—but by one of those options, it appears that according to the numbers there is at least a 40-percent greater likelihood—comparing 19 percent with approximately 30 percent—that a claimant will succeed and sort of keep that a secret, so that only those claimants that learn about the option of a traveling section actually have recourse to that apparently more favorable avenue for getting their BVA case decided.

Mr. EATON. You have to understand that it is the cases that have the best chance that the service organization will request a travel board and that the adjudication officer will schedule; and that is one of the reasons why the rate is so high on the allowances.

If you have everyone who wants a hearing in the regional office to have a travel board hearing before the Board—which, you know, you are talking about many, many thousands of hearings—in a regional office——

Mr. STEINBERG. I believe you had about 11,000——

Mr. EATON. Yes. Can you imagine the Board of Veterans' Appeals Board members handling that many travel board hearings? That is not the point.

Mr. STEINBERG. If you will excuse me one moment, I can certainly imagine that if claimants were aware of the possibility of success before the travel sections, that there might be many more of them that would wish to have them.

Mr. EATON. If they did do that, the allowance rate would go way down, you understand, because then there would be normal hearings. It is only these special hearings that are getting this attention because they are unusual cases and are very deserving.

All I can say is that if we are going to have travel boards on every case where the veteran wants them, we are going to have to have one heck of a lot of Board members.

Mr. STEINBERG. If I can take one more moment on this, Mr. Chairman, I think it is a rather important point. I don't understand the basis for your contention that the cases that go to travel board hearings are selectively determined based on a screening process that service organizations undertake.

Why have those service organizations been unable to prevail on those cases before the rating boards at the local level where they are in constant contact with those adjudication personnel?

Mr. Eaton. Why? A lot of their cases are allowed all the time. There are going to be some that they see they feel should be allowed. They think they have a real good case, but they have not been able to convince the regional office; that is going to happen.

And those are the ones where they say: I will put this before the travel board then.

Mr. Steinberg. Why is it that they feel putting it before the travel board, rather than, for example, if it is a pretty clear and obvious case, just submitting it on the record without a hearing to the BVA would be more advantageous to them?

Mr. Eaton. Oh, no.

Mr. Steinberg. What is it about the traveling section that they find desirable?

Mr. Eaton. It is always better in any case to have a personal hearing before the people who are deciding. There are exceptions to that; but generally, if you have a good case and you have a witness who is at all credible, you are better off facing those Board members and telling them all about it. Those are the facts of life.

Not only are travel board allowances higher, but allowances are higher where there are personal hearings in Washington—not as high as travel board—but there is not as much selection in the Washington office as in the travel boards. But they do pick and choose.

They are only allowed a few cases on the travel board for each service organization. They can only have so many because there is only so much time available for the travel board to hear those cases. So, they pick the best cases.

Mr. Steinberg. There is a quota?

Mr. Eaton. In effect. It has to be that way. If I were a service organization representative in the field, and if I could do it, I would want to have a travel board hearing in every case that I felt there was the slightest bit of merit to—every case that I wanted to have a hearing on. As you say, sometimes why bother with a hearing?

There are types of cases where it doesn't help at all to have a hearing, no matter what the merits; but the type that is good for a hearing, if I am going to have a hearing, I sure would like to have it before the travel board instead of the regional office. As you say, there are 11,000 of those; it is not practical.

[Subsequently, the Veterans' Administration furnished the following information:]

The Department of Veterans' Benefits has no centrally directed policy regarding the role of the VA regional offices in the Travel Board program. We have been advised that a Travel Board hearing schedule would typically begin with BVA advance notification of the dates when a traveling BVA Board Section would be visiting the VA regional office. The regional office adjudication officer would then advise the local service organization representatives of this preposed schedule. These local service organizations would then be given the chance to request the opportunity to present a formal hearing before the traveling BVA Board Section.

If an overwhelming demand for Travel Board hearings happened to arise at any one regional office, it is possible that not all veterans or service organizations requesting a hearing would be able to receive a personal hearing before the Travel Board. However, we are aware of no situation where any one service organization has been systematically excluded from the opportunity to present a veteran's appeal before a BVA Travel Board. We are discussing some of these Travel Board-related issues with DVB officials, and clarifying instructions to the field may prove necessary.

Mr. STEINBERG. Although, of course, having the travel board might in many cases entail a delay of a very substantial period of time, perhaps as much as a year if the travel section had just visited.

Mr. EATON. Good point. Unfortunately, that is another problem. One reason it stacks up as it does is because you will have individuals who say I am insisting on a travel board; and we hate to see them wait 9 months because it goes on our processing time. You know, that is part of that 412 days, when they wait 9 months.

So, we try to convince them they should have the hearing before the regional office; but if they absolutely insist, we usually say all right and you can wait 9 months, and then we will have it before the travel board. We don't like to do that because it takes so long that way.

Mr. STEINBERG. We may be submitting followup written questions on this issue. Thank you, Mr. Chairman.

Chairman CRANSTON. Form 1-9, which is used by a claimant to file an appeal to the BVA after the notice of disagreement, doesn't include a box for requesting a traveling board hearing, but does have a box for requesting either a field hearing or a hearing in Washington, DC. Why isn't the option of a traveling board section hearing presented to a claimant on that form?

Mr. EATON. For the same reason, of course, that I already told you. We cannot offer a travel board hearing to all people who want a hearing. It is just impossible from a practical standpoint for our 65 board members to go out and provide 11,000 personal hearings.

Chairman CRANSTON. It seems to me it is an issue of fairness, though, in not letting people know what their options are.

Mr. EATON. The only suggestion that I can offer—and this is a lousy suggestion, I agree—is to eliminate the travel board hearings, and then we wouldn't have that problem. There are not too many; they don't get that push. But your point is that the guy doesn't know about it, and so he doesn't ask for the travel board. I see what you are driving at, but I can't think of any solution because, if you offer it or give them the right to a travel board hearing, I don't see how we could possibly do it. It just is not practical at all.

Chairman CRANSTON. There is something wrong here.

Mr. EATON. Yes. We will work on it. Let's see if we can come up with something, some solution for it.

Chairman CRANSTON. Given that a claimant appears to have a significantly better chance of having his or her claim allowed when appearing before a traveling board section, for instance, in fiscal year 1987, 30.6 percent of the cases before traveling board sections were allowed, versus 19.5 percent of the cases with hearings before the BVA, and 12 percent of the cases with no hearings at all, would you agree that it would be more beneficial to claimants to allocate more resources to allow more travel board hearings?

Mr. EATON. Yes.

Chairman CRANSTON. All right. Would you look into that and see if you can offer something specific?

Mr. EATON. My only problem will be: Where do you draw the line?

Chairman CRANSTON. I would ask for a written reply.

Mr. EATON. Yes.

[Subsequently, the Veterans' Administration furnished the following information:]

Given the recent passage by the Senate of a judicial review measure, it would be extremely difficult to forecast the resources that would be required to afford every veteran who desires one a hearing before a travel board. The issue is further complicated by the uncertainty of what action, if any, the House may take on this measure. We will monitor the congressional action and will develop a proposal that will take into account the final congressional disposition of that issue.

Chairman CRANSTON. George, do you have any questions or a statement to make?

Senator MITCHELL. No, not at this time, Mr. Chairman. I will have a statement and questions for the next witness.

Chairman CRANSTON. Fine. In response to my prehearing question 28, you indicate that the law, section 4005(d)(4) of title 38, provides that any factual contention put forth by the regional office and not rebutted by a claimant is deemed admitted as a fact, but that in practice the Board does not require a claimant to contest every contention put forth by the regional office, but rather that the Board presumes that an appellant is not in agreement with contentions made in the statement of the case unless he or she indicates such agreement.

In light of the conflict between the law and the actual practice, do you think section 4005 should be amended to codify that practice?

Mr. EATON. I think that is a possibility. I would suggest we look into that. As a practical matter, the Board is always interested in doing what is best for the veteran, regardless of whether it is a technical obstruction of some sort or whatever.

Chairman CRANSTON. Would you give us a written response to that?

Mr. EATON. Yes.

[Subsequently, the Veterans' Administration furnished the following information:]

Because the provision is not used as a ground for dismissal for failure to object to items set forth in the Statement of the Case, we will look into the matter with the Office of General Counsel and determine if a legislative proposal would be appropriate.

Chairman CRANSTON. All of the service organizations that were asked to comment on BVA practices stated that the major cause for the increase in remands is a reduction, both in quality and numbers, of the adjudication personnel at the regional offices.

In your statement, however, you indicate that the regional offices are doing a good job of preparing the cases; and in your list of reasons for the increase in remands, you do not even mention the decrease of personnel at the RO level. Would you comment on this dichotomy in positions?

Mr. EATON. Inherent in all of our comments having to do with the reasons for remands, there is the possibility that in any one of them, whether it is additional examinations, additional development of other time, special issues—whatever the reasons that we give—it is always possible that additional resources at the local level would have made some difference. I cannot deny that.

It is very difficult for me to judge the ability of DVB whether they have the resources to do their job. All I can say is that I don't believe we have made any basic change in our procedures in determining remands; and the remands have gone up. We have come up with a number of reasons why we think they have gone up, but I cannot deny that could be one. I cannot really support that or deny it—one way or the other.

Chairman CRANSTON. In your statement, you discuss the evaluation of the work of staff attorneys, both in terms of quality and production. With the elimination of productivity bonuses for Board members, do you intend to continue to use productivity of the staff attorneys as a basis for promotion and bonuses?

Mr. EATON. Most definitely.

Chairman CRANSTON. In your statement, you state that the BVA response time is around 125 days. That is the time from when a case is certified by the regional office and received by the BVA in Washington, DC, to when a final decision is made. Is that correct?

Mr. EATON. Yes. At least, it is from the time that it arrives at the Board. I don't know whether it is the time of certification.

Chairman CRANSTON. In those cases in which a Field Rating Board acts as an agent of the BVA and conducts hearings at the regional office in its role as agent for the BVA, is the BVA response time the same, that is around 125 days?

Mr. EATON. I don't know that we have a figure on that, but I see no reason why it would change.

Chairman CRANSTON. Would you see if you have a figure on that?

Mr. EATON. All right.

[Subsequently, the Veterans' Administration furnished the following information:]

The average Fiscal Year 1987 BVA elapsed processing time for appeals involving a hearing on appeal before a regional office rating board acting as an agent for the BVA was 131 days. Total Fiscal Year 1987 elapsed processing time for appeals in this category can be broken down as follows:

	Days
Receipt of notice of disagreement [NOD] to issuance of statement of the case [SOC]	56
Issuance of SOC to receipt of substantive appeal [SA]	60
Receipt of SA to certification of appeal to BVA	285
Total field time	374
BVA processing time	131
Total appellate processing time	505

Chairman CRANSTON. Is it correct that a field rating board, when acting as an agent for the BVA, merely hears the evidence presented by the veteran and his or her representative and then sends the evidence to the Washington, DC, office of the BVA for a BVA panel to render a decision? Is that the way it works?

Mr. EATON. Yes.

Chairman CRANSTON. Do the individuals on the field rating board ask questions of the claimant and his or her representative?

Mr. EATON. Yes.

Mr. STEINBERG. Is there some question about whether or not the hearing panel at the regional office asks questions?

Mr. EATON. No. I was perhaps thinking a little on that. They ask lots of questions at the hearing, but the problem is that, following the hearing, they may review their own determination. Even though conducting a hearing for us, they still confirm their own.

On occasion, they will change their minds. And after they listen to the testimony, they will allow a case and never even send it to us.

Mr. STEINBERG. Can you give us something for the record as to the percentage of times that that occurs?

Mr. EATON. I am not so sure we can find that. See, we would never get that case. DVB might have that, but we would not have it because we would never get that case.

Mr. STEINBERG. Would you consult with DVB; and if they don't have figures on that, if you would ask if they could undertake a sample——

Mr. EATON. A study?

Mr. STEINBERG. Yes, but I am not talking about a scientific study—just a survey of five or six regional offices—and get the impressions of the adjudication officer at those regional offices as to how often that occurs?

Mr. EATON. All right. We will do that.

[Subsequently, the Veterans' Administration furnished the following information:]

At our request, DVB officials informally surveyed six VA regional office adjudication officers in reference to this issue. The question asked of the surveyed adjudication officers was as follows: "what is your estimate of the percentage of claims that are allowed at the VA regional office level following a hearing on appeal before a regional office rating board acting as an agent for the BVA?" One adjudication officer estimated this allowance rate to be between 5 percent and 10 percent; another adjudication officer estimated this rate to be 5 percent; three adjudication officers estimated their allowance rates to be 10 percent; and the final adjudication officer estimated this rate to be 25 percent. Based upon the results of this informal survey, the estimated average VA regional office allowance rate on appeals following a hearing on that appeal before a rating board acting as an agent for the BVA would be approximately 11.25 percent.

Mr. STEINBERG. Thank you.

Chairman CRANSTON. How are the impressions of the field rating board regarding credibility of witnesses passed on to the Board members who actually make the decision?

Mr. EATON. That has got to be a problem. Any time you have someone else listening to the hearing, other than the people who are making the decision, you do not pass that on. The Board members will read the transcript, and that is all they have available. That is the best they can do.

Chairman CRANSTON. If the impressions are not passed on and considered by the deciding member, doesn't that hearing serve little purpose?

Mr. EATON. Their impressions can affect them. If they want to, they can change their mind. But if their impressions are that the case should still be denied, they just send it on up; but they don't ever send it up and say they have listened to it and their impression was such-and-such. They would not do that.

Mr. STEINBERG. Let me pursue that for a moment. The BVA is obviously aware of the fact that the regional office panel that heard the case decided, on the basis of that hearing, not to reverse its prior decision. So, when the transcript of that hearing comes forward to Washington, there is that presumption that is involved in that case.

Now, of course, that rating panel that heard that case may have been the very same rating panel—and in most cases probably is—that made the initial unfavorable decision. Is that correct?

Mr. EATON. In the past, that was always correct. I believe that is changing right about now.

Mr. STEINBERG. That is to occur October 1. Is that correct?

Mr. EATON. Yes, but I think they are starting that practice a little early; they are trying to do some of that now, if I am not mistaken. At any rate, in the past it has certainly been as you say.

Mr. STEINBERG. And even if we have a fresh panel, as is going to occur—or a fresh hearing officer—I believe it will be one person—beginning October 1, we do have the transcript being sent to Washington with the understanding on the part of the BVA that that particular hearing officer or hearing Board decided not to reverse the regional office situation.

Mr. EATON. That, of course, is true with every case we get, whether there is a hearing or not.

Mr. STEINBERG. The difference being that in a personal appearance before the Board in Washington or before a traveling section, you have the opportunity on the part of those members to evaluate the credibility of various witnesses, which does not exist here.

I guess the point that we are trying to pursue is: Should there be some opportunity for those hearing the case to express their view of the credibility of the witnesses to the BVA when the transcript is forwarded. Have you ever looked into that possibility as a feasible possibility?

Mr. EATON. No. It is not feasible, but I have thought of it and I am aware of it. I know it is a fact—what you say is true—but it is not feasible in any way, to the best of my knowledge. You can reexamine it, look at it, and come up with some sort of figures as to what would happen.

There is always the possibility. I believe there is some thought in one of the current proposals about some regionalization of the BVA. There has been talk of that many years in the past, I believe.

If that were done in a certain manner, I suppose it would be far more practical than to have those types of hearings you are referring to.

Mr. STEINBERG. If you would give us for the record any thoughts you have on whether there are ways to make the hearing process that occurs at the regional office level somewhat more meaningful in terms of the credibility issue and report back to us?

Mr. EATON. All right.

[Subsequently, the Veterans' Administration furnished the following information:]

While it is always helpful to have the opportunity to hear the appellant present testimony in person, most of the appeals before the BVA do not turn on the issue of credibility of the appellant and or witnesses. The typical BVA appeal involves factual determinations which are verified by the documentary evidence of record rather than by the oral statement of the appellant and/or witness. Although careful attention is paid to oral statements of the appellant and witnesses, such statements are most persuasive when buttressed by the documentary evidence of record. If a situation occurs in which credibility is thought to be an issue by the appellant or representative, then the representative and/or appellant should seek a Travel Board hearing or a Washington, DC, hearing before the BVA. In practice, this appears to be the case.

Mr. STEINBERG. Thank you, Mr. Chairman.

Chairman CRANSTON. In discussing the BVA's current efforts to increase the quality of BVA decisions, you state that the specific objectives set forth in the program operating plan include "to assure that a certain level of consistency is maintained among decisions and Board sections, while still preserving the Board member's decisionmaking independence."

When and how was this objective implemented?

Mr. EATON. In the past 5 years, I would say, we have been putting more and more resources into this project of quality review. We have two deputy vice chairmen, and they each have a very small staff; and they spend a great deal of time checking these cases and seeing that they are being written properly.

Now, that has very little to do with allowances and denial; it has to do with the quality of the work. They have four different checks these days on a decision to try to catch any imperfections in the decision.

To the best of my knowledge, 10 years ago we didn't have any of that. We are spending a great deal more time these days on the quality review aspect.

Chairman CRANSTON. Before the implementation of this objective, were efforts made to maintain levels of consistency?

Mr. EATON. To me, consistency and quality, there is no correlation there. Quality has to do with how well you explain it, whether you have errors in it, and that sort of thing. Consistency has to do with whether the sections are following the same approach and the same rules.

We do use our quality checks to check on that, but we have not had much trouble, in my opinion, with consistency of applying the rules. We have these specialty sections to take care of special rules and so forth; and even though there are 21 sections, I really don't believe there is any inconsistency in that regard.

There is inconsistency on judgment, you understand, but not on how you apply the procedures.

Chairman CRANSTON. What is the range of salary for the Board members?

Mr. EATON. They are GS-15's; and of course, there are 10 different step grades in a GS-15's salary. I believe that step range is approximately $55,000 to $65,000—somewhere right in there.

[Subsequently, the Veterans' Administration furnished the following information:]

All Board Member positions, both legal and medical, are at the GS-15 level. Annual salaries of the Legal Members range from $54,907 (Step 1) through $71,377 (Step 10). The amount of the step increase is $1,830. The annual salaries of the Medical Members range from $57,418 (Step 1) through $72,500 (Step 10), with a step increase of $1,794.

Chairman CRANSTON. They start at what figure? $55,000? Does that sound right?

Mr. EATON. Yes, from $55,000 to $65,000, GS-15.

Chairman CRANSTON. In their testimony, the Veterans of Foreign Wars expressed a concern that the operations of the BVA are fragmented with 6 of your 21 Board sections being housed away from the rest of the Board sections because of space. Are you experiencing problems with such fragmentation?

Mr. EATON. Minor. It is almost more a morale problem than anything else; and as a matter of fact, it is soon to be seven sections of the Board that will be moving to a separate building. We just do not have the space in our building to keep everybody there. It is not a happy situation, but it is not insurmountable.

Chairman CRANSTON. If all the sections were to be consolidated in one building, do you think that consolidation should be in a facility other than the VA Central Office building in order to encourage an appearance of greater independence?

Mr. EATON. I suppose it would help the appearance. In my opinion, it would not change anything having to do with the actual independence.

Chairman CRANSTON. But you wouldn't object to that?

Mr. EATON. Oh, no.

Chairman CRANSTON. The VFW also urged that a third hearing room be added in order to reduce the continuing backlog of scheduling hearings. What is the current waiting time caused by the lack of another hearing room?

Mr. EATON. I believe that it takes something like 4 months. There are a lot of them scheduled, and a lot of them don't show. If they don't show when they are scheduled, we get to knock down that list a little bit.

Incidentally, we have plans—and it is just a few days from now—to be moving over to a new building on this annex; and it will have the third hearing room there. So, we will be doing that very, very soon.

Chairman CRANSTON. I think we have covered a lot of ground with you, and I appreciate your patience and your presence. I would appreciate it if you would have your responses for the record back to us by next Friday, June 17, if you could do that.

Mr. EATON. We will do our best.

Chairman CRANSTON. Thank you very much, and thanks to your silent accompanists. We will now hear from Kenneth Feinberg, Esq., the Court-Appointed Special Master of Agent Orange Litigation. I thank you for taking the time to be with us today.

Senator MITCHELL. Mr. Chairman, if I might make a statement at this point? Mr. Feinberg will be testifying on my legislation.

Chairman CRANSTON. Yes, all right.

OPENING STATEMENT OF SENATOR MITCHELL

Senator MITCHELL. Mr. Chairman, I thank you for scheduling this hearing, and I look forward to hearing the views of Mr. Feinberg and other witnesses on S. 1805, legislation I have introduced that would exclude payments made to veterans or their survivors under the Agent Orange Liability Settlement Fund from being counted as income when the Veterans' Administration determines a veteran's eligibility for VA pensions or medical care under category A of the means test provisions.

These payments are to be made to eligible individuals under a distribution plan that is part of the settlement of a class action suit against the chemical companies who manufactured and provided the U.S. military with agent orange for use as a defoliant in Vietnam.

No payments from the settlement have yet been made. Appeals of some aspects of the settlement and distribution plan are still pending before the Supreme Court. Tentatively, veterans could receive a maximum payment of about $13,000, and survivors could receive up to $3,400 under the court settlement plan.

Last year, I met with a Maine veteran who told me that he wouldn't get anything from the settlement because his VA pension would be offset for every dollar he got from the settlement. I was frankly taken aback by his statement; but after my staff researched the question, reviewed VA, Congressional Budget Office, and Congressional Research Service memoranda, I found out that the veteran was right.

Veterans who receive VA pensions would have their pensions reduced on a dollar-for-dollar basis for any payments made out of the settlement fund. In addition, the settlement payments could adversely affect a limited number of veterans' eligibility for free VA medical care and their participation in a number of other Federal means tested programs.

I think that is wrong. Few issues affecting Vietnam veterans are as persistent and troubling as agent orange. Veterans and their families have pressed Congress for more than a decade to try to resolve the scientific questions about a connection between exposure and particular illnesses or disabilities.

In response, Congress has directed several Federal agencies to conduct extensive research on agent orange and the health of Vietnam veterans. Everyone associated with this issue, including every member of this committee, hoped that scientific information generated by these studies would help to resolve the issues of adverse health effects from exposure to agent orange.

Unfortunately, as was painfully apparent in this committee's hearing just last month, an immediate resolution of that issue is doubtful. The debate in scientific circles, the VA, the Congress over a connection between agent orange exposure and adverse health for veterans continues.

It is impossible now to say when, how, or even if that debate will conclude. I feel strongly that it is unfair to deny or reduce a veteran's benefits because of payments that the veteran may receive as a result of the agent orange settlement while Congress continues to debate whether there is a connection between agent orange exposure and a particular veteran's health.

I hope the committee, after considering the legislation, will join with me and quickly approve this legislation so that veterans will not have their eligibility for VA benefits hurt by the receipt of settlement payments.

Two points need to be clarified. First, my legislation does not address the issue of other means tested Federal benefit programs. In their written testimony, several of today's witnesses expressed support for extending the exclusion of settlement payments from computation of income for those other programs.

I have not yet determined whether that should be done and express no view on that, but my legislation is limited in scope.

Second, the agent orange class action suit is one of the largest tort cases ever brought. It is complex and highly controversial. Many veterans have expressed concern over many aspects of the suit, ranging from the class itself, the settlement, the proposed distribution plan, and other aspects of the action.

That is understandable, and is to be expected in a case as large and complex, on an issue so controversial. But this hearing is not the forum to debate those issues. Appeals of the settlement are pending before the Supreme Court and are tangential to the central purpose of my legislation.

Should payments made to individuals from the settlement fund be exempt from computation as income for the purpose of determining a veteran's eligibility for a VA pension or cost-free VA medical care? I believe they should be. I hope the committee will agree and act promptly and favorably on my legislation.

Thank you, Mr. Chairman.

Chairman CRANSTON. Thank you very much, George. Mr. Feinberg, we welcome you.

STATEMENT OF KENNETH R. FEINBERG, COURT-APPOINTED SPECIAL MASTER, AGENT ORANGE LITIGATION

Mr. FEINBERG. Thank you, Mr. Chairman. I will be exceedingly brief, because I believe Mr. Chairman, you and Senator Mitchell and one or two other Senators know more about this problem of agent orange than anybody in the U.S. Senate; and I can, therefore, sum up.

The problem is very simple. As the court-appointed master of this case, I will be responsible in the next 6 to 9 months for distributing about $165 million to approximately 60,000 Vietnam veterans in the lawsuit.

As Senator Mitchell correctly points out, under existing VA interpretations any money received by eligible veterans will require an offset against pension benefits received under existing VA programs. Why? Two reasons.

There are only two recognized exceptions to offset rules currently that the VA recognizes. One, need-based assistance will not be offset. I heard the VA general counsel again this morning say that this lawsuit is like any other lawsuit, is not need-based and, therefore, they will offset at the VA.

Again, I say to the VA that if they examine the distribution plan in this case, it is need-based. The only Vietnam veterans under this lawsuit who will receive funds from this settlement are the families of deceased veterans who died from some illness allegedly caused by agent orange, or totally disabled veterans.

They are the only ones—the most needy—who will receive these settlement payments. So, Senator Mitchell's bill is designed to correct an interpretation at the VA that lumps this case with any other tort case in finding that the settlement proceeds are not need-based.

That is simply not a correct interpretation of the court's distribution plan; but in the absence of VA cooperation in that regard, Senator Mitchell's bill is essential. That is one exception: need.

A second exception is the one, Mr. Chairman, that you are so familiar with, that you have discussed and been involved in. If the VA would conclude that agent orange illnesses are "service-related", there would be no offset. But as Senator Mitchell just explained, the VA continues to refuse to recognize illnesses allegedly arising out of agent orange exposure in Vietnam as "service-related" because of the uncertainty of science and the medical evidence.

If they would recognize "service-related", that would prevent the need for an offset. In the absence of recognizing either of those exceptions—need-based or service-related—the VA plans to offset.

Now, what are they going to offset? And this is the last point I will make.

If it is a death case, the family of a deceased Vietnam veteran will receive an average of $1,800; that is all. They are going to offset $1,800. If you are 80-percent disabled, you are not going to get a dime out of this settlement. If you are totally disabled—unable to work under Social Security regulations—you are going to receive an average of $5,700; that is all.

And yet, the Veterans' Administration insists on interpreting its rules and regulations to require an offset of $5,700; that is the amount they will reduce a VA pension and health-care benefit plan.

In conclusion, Mr. Chairman, this case, unlike the representations made by the Veterans' Administration, is not like any other lawsuit, for the reasons stated by Senator Mitchell today and in his introductory statement to the legislation.

This is a rather unique lawsuit; I doubt very much anything like it will ever come again and I would hope that the 60,000 Vietnam veterans will not lose the benefits of this compensation by having the VA reduce, dollar for dollar, what they would otherwise get under their existing VA plans.

Chairman CRANSTON. Thank you very much. Thanks for your brevity and clarity in respect to your statement. George, would you like to go first?

[The prepared statement of Mr. Feinberg appears on p. 166.]

Senator MITCHELL. Yes, I would, Mr. Chairman. Thank you very much, Mr. Feinberg, for an excellent statement illuminating the issues here. Are you aware of any analogous situation to this lawsuit where a group of veterans has received a judgment or negotiated a settlement involving a third party in civil court relating to illnesses or disabilities alleged to have arisen as a result of their military service?

Mr. FEINBERG. No. There is nothing like this. It is unprecedented.

Senator MITCHELL. Right. You project up to 60,000 veterans or their survivors will receive compensation from the settlement fund. Can you tell us how you arrived at that figure?

Mr. FEINBERG. Yes, because that is the critical point. The court concluded, as you know, Mr. Chairman, that it wouldn't be fair to try and award damages to particular veterans for certain illnesses. That is because the medical evidence is very unclear on whether a soft tissue sarcoma should be compensated, chloracne should be compensated, but respiratory illness should not be compensated. The court was concerned that it would be terribly divisive and unfair to do that.

So, the court moved away from tort-related principles and instead concluded: If you were exposed to agent orange in Vietnam, and if you have died or if you have a total disability, you are the most needy and or your family is the most needy, we will compensate; and that is all we will compensate.

So, you are right, Senator Mitchell. The court concluded that traditional tort principles that govern in other negligence cases should not apply in deciding who would benefit; but instead, need should be the test for determining eligibility for compensation.

Senator MITCHELL. Do you have any way to estimate how many of the 60,000 individuals would be affected by the offset and, therefore, benefit from the enactment of S.1805?

Mr. FEINBERG. No, for two reasons. One, as you know, Mr. Chairman, the VA has been reluctant while this litigation is pending to cooperate in any way with the court in trying to get a handle on the nature and type of illnesses arising out of agent orange exposure.

Second, we don't yet know with sufficient clarity how many of the 60,000 claimants will file for what illness. So, we don't really have a handle yet on how many of those 60,000 would face the offset problem.

Senator MITCHELL. Can you now estimate the earliest date by which payments from the settlement fund may be distributed to eligible recipients?

Mr. FEINBERG. There are two appeals pending in the Supreme Court—petitions pending in the Supreme Court—that should be decided by the end of this month. We would hope that after a 4½-year wait from the time of the settlement, this money would begin to be distributed to eligible veterans probably in the spring of 1989.

Senator MITCHELL. Now, in its testimony, the Disabled American Veterans suggest amending my legislation to include the dependency and indemnity compensation program for parents, to extend the same protection to parents of Vietnam veterans who may receive an award from the settlement fund.

Will parents of a veteran receive payments from the settlement fund under the plan as it is now?

Mr. FEINBERG. No.

Senator MITCHELL. They will not?

Mr. FEINBERG. No.

Senator MITCHELL. Mr. Chairman, I just want to conclude by saying that Mr. Feinberg has been a very effective and forceful witness, in my judgment, in making a strong case for this legislation. I personally don't want to overstate the case, but I just feel outraged by the VA's position in this matter.

I think that, after all of what has occurred in the past decade, placing this matter in the proper historic context, it just seems incredible to me that they would offset these minor sums—as Mr. Feinberg says, an average of $1,800 to the survivors of a veteran now deceased—for an average of less than $6,000 and a maximum of $13,000 to a veteran who is now totally disabled—totally disabled. To have this sum offset just strikes me as incredible.

So, I hope very much the committee will move swiftly on this legislation. I thank you, Mr. Chairman.

Chairman CRANSTON. Thank you very much, George. Jay, do you have any statement or questions?

Senator ROCKEFELLER. I do not, although I would like to become a cosponsor of Senator Mitchell's legislation, S. 1805..

Senator MITCHELL. Thank you, Senator.

Chairman CRANSTON. You have made a persuasive case this morning. [Laughter.]

Mr. Feinberg, you talk about a needs-based distribution plan. Is any financial test used in that plan?

Mr. FEINBERG. No. No financial test is used; the court does not want to get into the filing of income tax returns and things like that.

Chairman CRANSTON. I guess that is what the VA is talking about. Please describe the social services for which the Agent Orange Assistance Fund will be used.

Mr. FEINBERG. There are a variety of plans under consideration right now, Mr. Chairman. No final decisions have been made. There will be hopefully some sort of medical and counseling assistance to the children of the Vietnam veteran.

There may be something done in the area of vocational and rehabilitative training and other programs designed to assist the members of the class in securing employment.

Chairman CRANSTON. What requirements will survivors of deceased veterans have to meet in order to qualify for payments from the settlement?

Mr. FEINBERG. They will simply have to demonstrate a certificate of death, that the Vietnam veteran is deceased; and also there will be a questionnaire that will be filled out, explaining the decedent's record in Vietnam, where he was, in order for the court to be satisfied that he was in the vicinity where agent orange exposure took place.

Chairman CRANSTON. Do you recommend extending the provisions of S. 1805 to exclude the settlement payments from income for purposes of all Federal needs-based programs, such as Supplemental Security Income and food stamps?

Mr. FEINBERG. I think that would be a welcome expansion. Whether or not the committee deems it wise for political reasons to do that, I don't know; but I think on the merits, that would be a welcome additional expansion.

Chairman CRANSTON. In your written testimony on page 4, you state that one of the requirements for receiving payments from the settlement is that the "veteran was exposed to agent orange while in Vietnam." What proof of such exposure would be required?

Mr. FEINBERG. That is the $64 question. The settlement fund has retained the services of two noted epidemiologists and doctors at Columbia who have been working over the years with developing new exposure data that would help plot agent orange exposure areas in Vietnam during the years in question.

I must say, Mr. Chairman, that under the plan as we envision it, there will be a heavy presumption in favor of exposure once certain minimal prerequisites are met.

Chairman **Cranston**. The Centers for Disease Control is able to determine past dioxin exposure through blood analysis at a cost of $1,000 per test. Do you have any plans to use this analysis to determine exposure?

Mr. **Feinberg**. We have thought about that. The trouble is, as you just pointed out, $1,000 a test for people who may only get $5,700 on the average is cost ineffective. We are still looking at that in terms of mass testing or something along those lines, but we are concerned about the cost in light of the limited amounts that will be made available to eligible veterans for payment.

Chairman **Cranston**. I will ask counsel to make a comment on that point.

Mr. **Steinberg**. Mr. Feinberg, you are aware of the report that the CDC submitted in August which showed, in essence, that only 1 out of 300 of every veteran who was tested among a cadre of veterans who, according to Army records, there was reason to believe had been heavily exposed. Only 1 out of 300 showed dioxin levels above background.

The reason for asking this question is that, it seems to us, that if such a test were used and if that same percentage were carried through, then that would make available a much larger amount of money for each of the payments that you were making to veterans.

Mr. **Feinberg**. Two answers to that. If you became convinced that that test in that study was truly a reliable litmus test for determining eligibility, and if you determined that it could be done in a cost-effective manner—both of which are hypotheses I am not sure are possible—then you could have a much more discriminating way to determine eligibility for compensation; and much fewer people may get more money.

If that could be done, Jon, I think that would be a plus. I am just not sure it can be done cost effectively, and I am not sure that that test ultimately will be accepted by the medical and the Vietnam community as the litmus test for determining exposure.

Mr. **Steinberg**. Let me just say regarding the scientific standpoint on the first issue that, insofar as we are aware, there is no dispute in the scientific community about the validity of that test as a way of measuring past exposure to dioxin. It is being used, as a matter of fact, by the New Jersey State commission in its Point Man Study; and at the hearing that we held several weeks ago, none of the groups or organizations that testified and none of the individuals that testified raised any question about the scientific validity of that test.

You are correct, of course, that there are political questions; but I am just commenting that, as far as we are aware, there is no dispute about the scientific validity of the CDC blood validation test.

Senator **Mitchell**. Mr. Chairman, could I make one comment on this question of specific financial test, to which you correctly alluded in your questioning as the VA position?

I would just like to say this. Every study ever made has concluded that those who fought in Vietnam were disproportionately black, poor, uneducated. We Americans sent to fight in the most harrowing, difficult, least popular conflict in our Nation's history those at the very bottom of the economic scale in our society.

Now, we are talking about funds generated in a private lawsuit that will go only to those out of that group who are totally disabled—or they have died and their survivors are left. And the VA says you have to have a specific financial test of each person in order to meet the exemption.

Now, Mr. Chairman, I have spent a lifetime listening to technical arguments by sharp lawyers that bear no relationship to the reality of the concept in which we are dealing. Now, certainly, out of the 60,000, will there be someone who may be a person of means, who might get $1,800 out of this? The answer is yes, but what is the reality?

The reality is that this is a group of people who suffered through the most difficult war, the indignity of what followed, the uncertainty now of agent orange—with which we have all grappled for a decade—and now the VA says, well, you don't have a specific financial test for each and every person, even though by definition the groups with which we are dealing are the poorest, least educated, least advantaged in our society.

I just think what we are talking about here is simple justice, and this isn't Government money that we are talking about. These are private funds.

So, the VA now comes along and says that we, the Government, are going to reap a windfall. We are going to save $175 million because these veterans prosecuted their lawsuit, were successful—although some of them questioned the degree of success—and now, that gives us a windfall for the Government.

And so you have the Government—and the Government is us, the people of this country—having sent these young, poor, black, uneducated people by and large to fight this dirty war; now, we saying we are going to reap this windfall.

To me, it is very troublesome, and I have a hard time containing myself on the VA's position on this. I just think we are splitting legal hairs on this question of a financial test.

Chairman Cranston. Thank you, George. The VA, on page 12 of its testimony, asserts that "there is no difference in the need status of persons receiving payments from the agent orange settlement or from the court settlement in a different type of tort suit whose countable income for pension purposes would include the settlement received."

On page 14, the VA further asserts that "enactment of S. 1805 would result in different eligibility determinations or rates being applied to claimants who really have identical incomes but from different sources."

Now, how do you respond to those comments?

Mr. Feinberg. Senator Mitchell really responded. There are a couple of answers. First, I would urge the VA to go back and look at the plan.

If I thought it would make any difference to ask every one of the 60,000 to file an income tax return to show that they are below the poverty line or on the border of the poverty line or earning $12,000 a year or whatever, we would do that. It would be an administrative nightmare to do it; but the *real* distinction that the VA, I think, ignores is that the plan itself, Mr. Chairman, is not a tort-based type of plan where we are going to be examining different illnesses or what have you.

Basically, what we are trying to do is say: You 60,000 who are totally disabled, or the family of a decreased veteran, will receive compensation. There may be a banker among them, but we haven't found many bankers in this group—Senator Mitchell's point—and to the extent that the VA makes a technical legal point, I think there should be an asterisk and a footnote saying that this is a rare exception.

Chairman CRANSTON. On page 12 of its testimony, the VA also asserts that the settlement proceeds should not be treated differently on the assumption that they constitute payments for injuries incurred in military service, since—to quote them—"there has been no admission of liability on the part of the chemical companies, and no determination of cause and effect has been made between any alleged exposure to agent orange and the subsequent development of adverse health effects."

Would you comment on those statements?

Mr. FEINBERG. I think they are right about that. I don't think that the chemical industry has formally admitted liability; of course, they have come up with $180 million in restitution. But you have to ask the chemical industry as to why they have agreed to the settlement.

The U.S. Government has never admitted cause and effect and has never been any part of this settlement.

Chairman CRANSTON. Did the judge find any cause and effect?

Mr. FEINBERG. The judge concluded that it was "dubious'" that there would be cause and effect; as a legal matter it is dubious. In a court of law, it would be difficult for the plaintiff veterans to be able to demonstrate cause and effect.

That is not to say that there isn't cause and effect but in a civil litigation, it would be dubious that the plaintiffs could prevail. So, the court—precisely for that reason, Mr. Chairman—concluded that the distribution plan should be based on other than cause and effect and the awards should go to the most needy, that is the totally disabled or the families of deceased veterans.

Chairman CRANSTON. I have no further questions. George.

Senator MITCHELL. I would just like to make one comment on the question of the admission of liability. As you know, Mr. Chairman, and as every lawyer knows, that is a standard provision included in every settlement in a civil case that occurs in any court in this country. That is another legal technicality that I don't think can be used as an obstacle to this legislation.

Now, it may be on the merits. It is true that proving cause and effect with respect to manmade chemical compounds has become a very serious problem in our society. There are now in existence 50,000 such compounds. Man creates 1,000 new ones each year; the majority of them are used, distributed, and disposed of without any human knowledge as to their adverse effects on either humans or the environment.

It is one of the most serious problems facing modern industrialized society; and the law is a couple of decades behind the reality of human existence in this area. It is one of the reasons why we have this problem, not only with agent orange, but in the whole area of toxic chemicals and toxic pollutants.

Now, I think ultimately the law will catch up with reality, but it hasn't yet. I don't think in this case it ought to be used as an obstacle to this type of legislation.

Chairman CRANSTON. Jay.

Senator ROCKEFELLER. Mr. Chairman, I have no questions.

Chairman CRANSTON. Thank you very much. We appreciate your being with us a great deal.

Mr. FEINBERG. Thank you, Mr. Chairman.

Chairman CRANSTON. We now have a panel dealing with VA drug and alcoholism treatment programs, especially contract programs for community residential halfway house treatment.

Our panel consists of Ed Bartholomew, director of the Friendship House in Baltimore, MD, a program providing treatment to veterans under VA contracts; Doug Chiapetta, director of the Therapeutic Communities of America; Dr. Martin Koretzky, chief of psychology service at the Fort Howard VA Medical Center in Baltimore; and Dr. Paul Errera, director of the Mental Health and Behavioral Sciences Service in the Department of Medicine and Surgery at the VA Central Office.

I welcome each of you. I regret that Marc Rosenbaum, executive director of the Community Program, Our Family, in Napa, CA, who was scheduled to testify is unable to join us this morning because of illness. However, I would like to say for the record that I found Mr. Rosenbaum's testimony extremely helpful and deeply appreciate his assistance to this committee.

I am pleased, therefore, that Mr. Chiapetta, whose organization membership includes the Our Family facility, has graciously agreed to present Mr. Rosenbaum's testimony on very short notice. I thank all of you and welcome you.

It is very timely that we take testimony on the VA's programs on substance abuse today because there is an effort currently under way in the Senate to develop comprehensive legislation to combat drug abuse.

In addition to our hearing, a number of different committees are holding hearings this week and next on this grave threat. I am very proud to be a member of the Democratic Task Force on Drug Abuse, as I was in 1986, and I am working to extend and increase the set-aside that I proposed and that we enacted in 1986 for the VA drug and alcohol abuse programs out of the Emergency Substance Abuse Block Grant.

It resulted in a transfer to the VA of more than $10 million for use in fiscal year 1987, which enabled an additional 2,100 veterans to receive care through the Contract Residential Treatment Program. This year, I am also pressing for funding for evaluation of and research in the other substance abuse programs run directly by the VA—detoxification, methadone, and outpatient treatment.

We need to consolidate the information we have received from the evaluation study on the contract program about the effectiveness of various types of treatment generally, both to benefit the VA's own programs and for the Nation at large. The VA is an ideal setting to gather that type of information.

In addition, because of the VA's positive experience with the contract halfway house programs, I believe that there should be increased funding for and an emphasis on residential drug treatment programs for nonveterans and especially for certain special populations like adolescents and women.

I intend to ask the witnesses this morning what their experience has been with nonveterans and intend to pursue this issue in the development of our antidrug abuse initiatives.

Dr. Koretzky and Dr. Errera do not have prepared statements, but will respond to questions. Now, Mr. Chiapetta, would you please begin by summarizing Mr. Rosenbaum's testimony, keeping in mind, please, the 5-minute limit?

STATEMENT OF DOUG CHIAPETTA, DIRECTOR, THERAPEUTIC COMMUNITIES OF AMERICA, ON BEHALF OF MARC ROSENBAUM, EXECUTIVE DIRECTOR, OUR FAMILY CORP., NAPA, CA

Mr. CHIAPETTA. Thank you, Mr. Chairman. First of all, I do want to allude to the fact that, within the context of therapeutic communities, we do treat primarily nonveterans. However, for the sake of Our Family Corp., which as you know is based in Napa, CA, that program focuses heavily on treating chemically addicted veterans; and I will begin my testimony by, as you said, summarizing Mr. Rosenbaum's piece here today.

Marc Rosenbaum, for those of you who are not familiar with him, is the chief executive officer of Our Family Corp., a large nonprofit chemical dependency treatment center located in Napa, CA. The reason I am here today, as you alluded to earlier, on such short notice, is that he is a member of an association that I head up here in Washington called Therapeutic Communities of America.

Just for the record, it is an association of some 300 residential drug-free program sites founded in 1975 as a nonprofit association. We treat primarily the hardcore addicts—he opiate of users, the heroin addicts. Obviously, today, we are being inundated with problems of chemically dependent individuals associated with AIDS, IV drug abusers, the homeless population.

We really see it all. We deal primarily with the indigent; and to say the least, we are very much involved in the trenches right now, and I do want to take an opportunity to comment on your question later about my assessment treating nonveterans, and I encourage questions on that matter.

Continuing further again now on Mr. Rosenbaum's testimony, Marc has the opportunity to administer a pilot contract with the Veterans' Administration. For the last 8 years, Our Family has treated veterans with chemical dependency problems on contract with the Veterans' Administration Hospital in Martinez, CA.

Because of the experience at this facility in working with over 300 veterans referred to inpatient treatment, he feels uniquely qualified to speak about the strengths and weaknesses of this pilot program as they have experienced it.

For the record, Our Family is a recovery center with a therapeutic community orientation, providing 80 resident treatment beds in four different facilities. The average length of stay is about 9 months; the average length of stay in a generic therapeutic community is anywhere from 6 months to 2 years.

Marc's facility again is obviously a long-term program designed to treat chronic abusers with a history of failure in other types of programs. Interestingly enough, the majority of their beds—50 in all—are dedicated to adolescent care; and they are known throughout the State of California as one of the finest providers of these services.

In regard to the provision of services to veterans through this particular pilot project that allows for placing veterans in a community-based treatment facility, Mr. Rosenbaum has a number of observations.

First, he thinks that the project has been tremendously effective both for clinical and financial reasons. By and large, the veterans placed in the Our Family Program have stayed, responded well to treatment, become leaders in the therapeutic community, and have maintained successful recovery over time. Again, that is a point to emphasize; that is traditionally what happens within a therapeutic community.

We are taking a lot of people off the streets who have fallen prey to hardcore addictions, primarily the heroin addicts; and they end up responding well to treatment and eventually go on to be leaders within the therapeutic communities and aspire to executive leadership in that particular nonprofit agency.

Again, the figures from Our Family have corresponded with those collected by Mr. Ira Brown, and he is with the Martinez VA, and indicate that over 60 percent of the veterans who have participated in this program are either abstinent or report drastically reduced consumption levels 6 full months after completing inpatient treatment.

The vast majority of veterans placed in the Our Family Program have been Vietnam era veterans and, because of this, have responded especially well to a community-based program. The characteristics that we have noted that are common among veterans are as follows; and again, in the interest of time, I will just summarize.

The chemical dependency problems of the average veteran are horrendous. They are almost always, without exception, suffering from very chronic and extremely significant levels of abuse of both alcohol and other drugs. Their level of abuse—and I think this is an interesting point—and length of time using are perhaps 40 percent greater than other alcoholics and addicts in the Our Family Program.

They are generally profoundly depressed and generally see little hope for recovery; and furthermore, they have a propensity toward paranoia and have an underlying fear that the Vietnam experience has made them forever different and in some painful way.

The first and great benefit of this residential contract, Mr. Chairman, with a community-based facility, is that the Our Family experience with veterans is that they have a need and a preference to be integrated in treatment with people who are not veterans. I just could not underscore that point enough because they need the commonness of this kind of a setting because of their addiction.

They need to feel like they are being acclimated back in a very common setting. They need to get back to a regular pace in life. By being in a community-based program, Mr. Rosenbaum feels that they can get a much clear perspective that their addiction is the source of most of their current problems and not their military history.

It appears that veterans respond well to a highly structured therapeutic community; and one of the important points about this approach is that the Our Family Program, as well as all therapeutic communities, treat the veterans as if they want to get them upwardly mobile, active, and make them realize that they are responsible and aggressive in pursuit of their recovery.

They do not allow them to think of themselves as patients who are out of control and must be taken care of. The philosophy is pervasive in community-based programs.

Because of these reasons, Mr. Rosenbaum thinks that it is clinically dictated that veterans in general who have drug and alcohol addictions will respond better to therapeutic community-based programs. And now, he wants to just quickly highlight some of the shortcomings, I suppose, of this particular program.

Chairman CRANSTON. I have to ask you to try to conclude.

Mr. CHIAPETTA. Yes, I am trying. You have to realize I had just seen this for the first time this morning, just 15 minutes ago.

Chairman CRANSTON. Yes, I understand that.

Mr. CHIAPETTA. His biggest issue with regard to the residential contract is the length of stay. As it is currently structured, the length of stay in a community-based program is for 60 days—that is the maximum—with the possibility of a 30-day extension. And in his opinion, in therapeutic communities, this is simply too short. As stated earlier, the Our Family length of stay is about 9 months.

So, I think, in summation he is recommending, Mr. Chairman, that the length of stay for a community-based program be allowed to be extended to 90 days for treatment, with possible extensions for an additional 60 days for a minority of the cases with well-established criteria.

Furthermore, he cites—and this is important—that those participating in the Veterans' Administration's hospitals are having their maximum stay reduced from 28 to 21 days. In his opinion, this doesn't allow for adequate time for the veteran to stabilize, assess, and facilitate appropriate placement.

So, in conclusion, Our Family is obviously honored to be assisting U.S. veterans with this innovative and excellent program. It is an experience that they find unique and a special level of satisfaction in treating the Vietnam era veteran.

I would just say, Mr. Chairman, from the broad or national perspective on the part of therapeutic communities, we really believe that because of our particular approach, the regimented, high discipline oriented environment that a veteran is placed into, focusing really on having that individual take responsibility for his own addiction and the fact that he is an addict and out of control.

This is a very structured, discipline-oriented program. We try to put them through job training programs and get them reacclimated to the community; and I have a bias here because in our residential program, we have a lot of veterans who are being treated in a therapeutic community and are not working in conjunction with the local VA hospitals.

We take them off the streets, and we treat them just because that is the nature of our job. So, if I had any national recommendation, I would like to see greater encouragement with the VA hospitals locally working with residential therapeutic communities because I think that we are doing an outstanding job in treating the chemically dependent veteran.

I thank you for your time, and I will be open to any questions.

Chairman CRANSTON. Thank you very much. Mr. Bartholomew, I understand you have an opening statement. Would you try to do it in 5 minutes, please?

[The prepared statement of Mr. Rosenbaum appears on p. 173.]

STATEMENT OF EDGAR M. BARTHOLOMEW, EXECUTIVE DIRECTOR, FRIENDSHIP HOUSE, BALTIMORE, MD

Mr. BARTHOLOMEW. Yes, thank you, Mr. Chairman. Friendship House is a drug-free residential halfway house for the male recovering alcohol and addict. Friendship House has been under contract with the Veterans' Administration at Fort Howard since 1982.

Prior to admission, as stated under contract, the counselor of a referring group such as Fort Howard is notified as to a preadmission interview to determine the patient's status and the need for a halfway house setting for the individual. During the interview, the importance of an explanation of the program's policies and procedures are presented to the patient.

He is reassured for the first 60 days that room and board is paid through the Veterans' Administration contract, during which time he will utilize all resources available. Resources include support of community services and vocational rehabilitation in collaboration with the Veterans' Administration sources.

Following admission into the house, the patient and counselor will discuss an individualized treatment plan. The plan will include one-on-one counseling, when necessary; group counseling, once per week; and a minimum of seven alcoholics anonymous and/or narcotics anonymous meetings per week. When deemed necessary, a resident may be referred to an outside agency to meet the special needs not available in the house.

It is further agreed that the resident will receive basic health and personal hygiene maintenance, monitoring of medications, and any other service or supplies that may be necessary to aid in his recovery. This may include followup counseling and aftercare through the Veterans' Administration Medical Center at Fort Howard.

At any time during the 60 day contracted period that a resident leaves the facility for any reason, the Veterans' Administration authorities are notified; and the contract is terminated.

In the next 60 days, having met the goals of the treatment plan, the resident should be able to and capable of training through vocational rehabilitation or has established full-time or part-time employment; also to have a secure living arrangement and foundation for living a drug-free lifestyle.

In the event that the resident is unemployable due to physical or mental handicaps, a request of an additional 30 days through the Veterans' Administration may be necessary. Otherwise, the resident will agree to apply for social services to meet his needs.

Friendship House is a nine-man halfway house. During the past 2 years since I have been there—since May 1986—I have had 27 veterans from the Fort Howard medical facility. Out of that 27, we have had 18 completed successfully, which was over a 4 to 6 months' in-stay at the house; and they have also had either full-time employment or part-time employment and going to school, being reeducated, being retrained in some areas.

We also have over there the living quarters which are necessary and have followup contacts and everything to help them get out into the world to become a more responsible person in society. They have aftercare through other facilities.

Of the 27 we had 6 that were not completed, due to reasons of their own—maybe family problems and they had to return home, or a job was more important than completing their treatment. And out of the 27 over the past 2 years, there were 3 who left because of drinking.

And when we ask those people to leave, we follow up with them and refer them to outside resources, and sometimes give them right back to the Veterans' Administration for another detox. And of the 18 who do not go back, there is a substantial savings there, and they are ready for society; and they carry the message that there is hope.

I believe that, since I have been there, I have had four contracts that I have asked for additional days; and I have been granted them due to the reasons that these people were slow and needed more education or other training; and they just weren't ready to go back out. All I have done is ask, and I have had no problem getting it.

I remember 11 years ago when I went to Fort Howard in the same program, there was no program like this; there was nothing. I went back out and hit the street, you know, and I had to survive on my own with a wife and six kids. We have veterans who come there and do stay in treatment. We get veterans who are homeless, and we don't just treat veterans; we have over seven other clients per month there also. But there is an additional need for help through the Veterans' Administration funds.

Thank you, sir.

Chairman CRANSTON. Thank you very much. Jay, do you have any questions or comments?

[The prepared statement of Mr. Bartholomew appears on p. 181.]

Senator ROCKEFELLER. I do not at the moment. I assume you are going to go through the panel?

Chairman CRANSTON. Yes.

Senator ROCKEFELLER. Will we have the testimony for Dr. Koretzky? I don't seem to have it.

Chairman CRANSTON. No. There are no statements but they are not going to make opening statements but they are going to answer questions.

Dr. KORETZKY. Mr. Chairman, I do have a statement, which I would like to give you, for you to either put in the record or not, if you would like, since I have it prepared.

Chairman CRANSTON. All right. If you can just put it in the record, that would be fine.

Dr. KORETZKY. Fine.

Chairman CRANSTON. All right. Thank you very much. If you want, you may summarize it briefly.

Dr. KORETZKY. It is very brief; it is only a one-page statement.

Chairman CRANSTON. One page?

Dr. KORETZKY. Yes, sir.

Chairman CRANSTON. Go ahead.

STATEMENT OF DR. MARTIN B. KORETZKY, CHIEF OF PSYCHOLOGY SERVICE, FORT HOWARD VA MEDICAL CENTER, BALTIMORE, MD, ACCOMPANIED BY WILLIAM KERR, SENIOR ALCOHOLISM COUNSELOR

Dr. KORETZKY. Also, I would like to introduce Mr. William Kerr, who is not listed on the panel. He is our senior alcoholism counselor, who has worked very intensively with the program over the years, and you may have questions that you would like to ask him as well.

When I arrived at the Fort Howard VA Medical Center in April 1983 as chief of the psychology service, the halfway house program was already in operation. From that time until the present, the need for these services for veterans completing our inpatient alcohol dependency treatment program has been strong; until recently, funding was generally adequate.

The limiting factor until this fiscal year was number of available contract beds. To qualify for VA contracts, halfway houses must meet stiff requirements in a number of areas, including physical plant, nutrition, and program activities, as Mr. Bartholomew was telling you.

Most houses which applied were turned down at first and even on other attempts, as Mr. Kerr can tell you if you want to pursue that in greater detail. This past fall, after several years of working closely with various halfway house administrators, enough beds finally received approval. We started filling these beds immediately, and all of us involved felt satisfaction that the years of effort were paying off to the benefit of our patients.

Currently, funding is not available to expand the program to meet patient demands or even to maintain present levels of halfway house placement.

We believe that the program has the capability to accomplish a much greater impact on our patients if increased funding were available. We are trying to maintain our relationships with the halfway house directors. We feel unhappy because these institutions have gone through a positive evolution at considerable expense to meet VA standards and thus qualify for our contract placements.

This process has taken 6 years because change does not come overnight. We have known all along, of course, that the program was funded year to year; but the obvious patient care benefits, strong needs and clear cost effectiveness of the program gave us confidence that the program would be continued and expanded.

At the moment, we are doing our best to maintain contact with the approved halfway houses, sending them referrals that we can afford and waiting for a better day to come. Your concern and responsiveness about this area are very much appreciated.

Chairman **Cranston**. Thank you very much.

Mr. Bartholomew, let me start by asking you a question. I am going to jump around to each of you. About how many veterans are referred to the Friendship House each year?

Mr. **Bartholomew**. We contract each year for 24. Approximately, two per month we are trying to get in now.

Chairman **Cranston**. What percentage of the total number of Friendship House residents generally are veterans?

Mr. **Bartholomew**. I would say 20 percent.

Chairman **Cranston**. Do you have any data on how many veterans that enroll in your program actually complete the program?

Mr. **Bartholomew**. Out of the last 27 patients who have enrolled, 18 have completed successfully.

Chairman **Cranston**. Do you have completion rates for all your participants?

Mr. **Bartholomew**. Of the veterans? Yes.

Chairman **Cranston**. Total? The nonveterans and veterans?

Mr. **Bartholomew**. Yes, sir; I do.

Chairman **Cranston**. What are they?

Mr. **Bartholomew**. I don't have them with me here; I am sorry.

Chairman **Cranston**. Would you give us that for the record?

Mr. **Bartholomew**. Out of the last 56 clients, 27 were veterans. Like I said, 18 had completed; 6 were noncompliance and left; 3 left because they were drinking. Of the other ones over there, I believe it was 5 were drinking.

Chairman **Cranston**. What about the completion rate? Give us the number of completions of the course for the veterans and nonveterans. Give us that later on in writing.

Mr. **Bartholomew**. All right.

Chairman **Cranston**. Where are your other clients—nonveterans—referred from?

Mr. **Bartholomew**. From the local facilities around the Maryland area, such as Menlo Park facilities, the Turk House, 28-day treatment centers, Hopkins ARU. Whoever needs a bed and there is a bed available at that time, we can fill the bed.

Chairman **Cranston**. How do the veterans do compared to the nonveterans?

Mr. **Bartholomew**. They do better because they have no worry of having to go out and find a job or getting on social services. They are paid up for 60 days, and that fact reassures them. They have 60 days that they can get into education and training.

Senator **Rockefeller**. I didn't quite catch that. You are saying that the difference in the response——

Mr. **Bartholomew**. They often come out of the 28-day inpatient treatment centers.

Senator **Rockefeller**. I understand, but because of the 28 days versus the 60 days——

Mr. BARTHOLOMEW. Sixty days is what is on contract, and they know that their rent and all is going to be paid. They have no fear of having to catch up on their rent like the people who are not veterans; they still have to pay their rent, too. But the veteran who comes there is assured that for at least 60 days they are taken care of and that they can go back to the facility for aftercare and all these other arrangements that have been made prior to coming in.

The people who are not veterans that we have to send back sometimes cannot get into an aftercare program because there are so many other people involved; and the programs that are available are not what we are looking for more or less for the education purposes for those individuals.

Chairman CRANSTON. Mr. Rosenbaum noted on page 3 of his testimony that the veterans receiving care in his program are primarily Vietnam era veterans and suffer from very chronic and serious abuse of both alcohol and other drugs, up to 40 percent greater than other alcoholics and addicts in his program.

How would you, Mr. Bartholomew, describe the veterans in your program in terms of these characteristics?

Mr. BARTHOLOMEW. I wouldn't say it was 40 percent. I would say it was about 25 percent of Vietnam era because we do have people from World War II coming in still; we have had them from Korea. So, it is not primarily the veterans from the Vietnam era.

Chairman CRANSTON. Do you find the veterans' drug and alcohol problems to be more serious and more chronic than the nonveterans?

Mr. BARTHOLOMEW. Yes; I do.

Chairman CRANSTON. Do you work at all with one or more of the VA veteran centers regarding referrals or counseling?

Mr. BARTHOLOMEW. Yes, sir; I do.

Chairman CRANSTON. Dr. Koretzky, does your medical center provide any assistance to help foster working relationships between halfway house contractors and veteran centers?

Dr. KORETZKY. No, sir; well, I will take that back. Indirectly. We have an arrangement with the local vet center. They send a representative out to our alcohol dependency treatment program—the rehab program. He meets weekly with veterans who are Vietnam veterans who happen to be in the program.

When they go to the halfway house, they are encouraged to continue such relationships.

Chairman CRANSTON. Do you think such arrangements should be promoted more generally?

Dr. KORETZKY. Such as the one we have?

Chairman CRANSTON. I want to ask Dr. Errera this question. Do you think we should encourage such arrangements and that they would be beneficial on a more regular basis?

TESTIMONY OF DR. PAUL ERRERA, DIRECTOR, MENTAL HEALTH AND BEHAVIORAL SCIENCES SERVICE, DEPARTMENT OF MEDICINE AND SURGERY, VETERANS' ADMINISTRATION

Dr. ERRERA. Collaboration between the vet centers and the medical centers and the halfway houses?

Chairman CRANSTON. Yes.

Dr. ERRERA. Absolutely. That is the thrust that Dr. Blank and I have been pushing on many levels.

Chairman CRANSTON. Have you issued instructions that that should be done?

Dr. ERRERA. We have had even educational programs where we have met and brought together the chiefs of psychiatry, the team leaders of vet centers, and——

Chairman CRANSTON. Are there written instructions to that effect?

Dr. ERRERA. Written instructions? No; we don't have very many written instructions about the clinical care. We have guidelines in terms of general things. I think that works best if we discuss it.

One way we have implemented it is we have mental health councils where we bring the vet center team leader in with these chiefs and they discuss these matters.

Mr. STEINBERG. Dr. Errera, the particular question at this point is arrangements for greater coordination between the vet center and the contracting facilities, rather than the vet center and your own in-house dependency units. Do you have any policy on that?

Dr. ERRERA. No; I don't issue policy on what the vet centers do. All I can do really is focus on the collaboration between the vet centers and our services and encourage them to use these halfway house facilities as we do, to the degree that they link up with us.

Mr. STEINBERG. Have you talked to Dr. Blank about the desirability—if you think it is desirable—as Dr. Koretzky has indicated, of having a collaborative relationship between the vet center and these community residential facilities under contract with the VA?

Dr. ERRERA. We have talked about that as part of a general thing, not specifically for one contract facility, but in general that we share resources and we share programs. Yes. The same way with the homeless program, with the alcohol halfway house program; this certainly is an issue that has come up many times.

Mr. STEINBERG. Could you discuss within the department whether or not there should be some more formal guidance issued to the vet centers and to your contractors? After all, these contractors are proceeding as your agents in taking care of the veterans after they have been detoxed in your facilities.

So, the contractors are acting as your agents, and you can certainly give them guidance as well as guidance coming to the vet centers to promote this collaboration.

So, if you would look into that and report back to the committee on what can be done to provide that guidance in both directions, we would very much appreciate that. Thank you, Mr. Chairman.

[Subsequently, the Veterans' Administration furnished the following information:]

Mental Health and Behavioral Sciences Service has written a brief description of the services provided by the contract halfway houses for substance abusers and how they fit into the overall VA treatment programs. This memo has been given to the Readjustment Counseling Service and they will add on the therapeutic contribution that Vet Centers can make to the treatment of veterans with combined PTSD and substance abuse.

That document, when fully reviewed, will be sent out as an operational teletype to all VEt Centers and Psychiatry Services.

Chairman CRANSTON. I have a question now for three of you: For Mr. Bartholomew, Dr. Koretzky, and Dr. Errera. Mr. Rosenbaum of Our Family stated on pages 3 and 4 of his testimony that veterans "have a need and preference to be integrated in treatment with people who were not veterans. In a community-based program they can get a much clearer perspective that their addiction is the source of most of their current problems, not their military history."

Mr. Rosenbaum went on to say that he believes that veterans in general who have drug and alcohol addictions respond better in community-based programs. What are your views on these statements, particularly with regard to their significance for VA in-house programs? Let me start with Mr. Bartholomew.

Mr. BARTHOLOMEW. I believe they should be integrated because of the fact that their alcoholism is alcoholism and the drug addiction is drug addiction. Just because you are a veteran doesn't make you a veteran drunk or a worse drunk; you know, it is the same disease and the same recovery process.

They go through the same programs, the same followup, just different areas in recovery.

Chairman CRANSTON. Dr. Koretzky, any comment?

Dr. KORETZKY. Yes, sir, two comments. First of all, there is a lack of resources across the board, particularly for drug addiction, in my experience. I can't speak nationally but I can speak about the Baltimore area.

Second, I believe there is a definite place for inpatient VA hospital programs specifically geared to veterans, particularly Vietnam veterans. I had the experience at Northport, NY, of being head of such a program; 5 years ago, I left there.

It is my impression that there is an absolute necessity, particularly for post-traumatic stress disorder, and a lot of veterans with PTSD have substance abuse problems—an awful lot of them. There is a definite necessity to have specialized programs geared only to these people for a whole variety of reasons I could list, which if you would like I will.

Now, at a later stage of treatment, I believe it is important to get the veterans integrated into the greater community also; and there are a variety of ways. This is one good way to do it, these community-based programs.

Chairman CRANSTON. Dr. Errera?

Dr. ERRERA. The need for "integration" or "reentry" and the need for separateness are important and complex issues. Mr. Chairman, as you know, this is being discussed also for people with PTSD. To what degree should they have separate programs versus integrated programs?

My own bias leans in the direction of integrated programs. And if initially in specific cases you should not have them, then the sooner you can get to them, the better. I would recognize the need some people have for separateness and then gradually move them into a community-based or more general setting.

Chairman CRANSTON. Dr. Errera, would you please describe the type of inpatient and outpatient drug and alcohol abuse programs that are operated by the VA in particular? Are drug and alcohol units run separately or jointly and are different methods of treatment utilized?

Dr. **ERRERA**. They are run separately and jointly. If you would like a detailed description, I think Dr Suchinski, who is sitting right in back of me and who is directly responsible for those programs, might be able to do a better job.

Chairman **CRANSTON**. If you could give us a brief statement, Dr. Suchinski?

Dr. **SUCHINSKI**. All right. A brief statement is that we have about 108 alcohol programs, about 50 drug programs. The length of stay has been reduced, which is the statement of Mr. Rosenbaum.

Chairman **CRANSTON**. What are the different methods of treatment?

Dr. **ERRERA**. It is using what I call the old Greek method of treatment, which is you put all the medicine in the pot, and the Greek physician said: The body will have the wisdom to take out what it needs. AA, group, individual education, psychotherapy medication—in other words, it is very much a multidisciplinary, multifocused program, which incorporates a large number of treatment procedures.

Chairman **CRANSTON**. Do you find that one thing works for one person and another thing for somebody else?

Dr. **ERRERA**. This is why I welcomed your comment about evaluation studies. I think one of the problems we have with the treatment of substance abuse is that we tend to do just what I described, which is we have the whole wide array of treatments, and we don't discriminate enough—everybody gets everything; and Dr. Suchinski and I have been working on developing ideas on how we can more selectively identify which populations need what treatment approaches.

For example, length of stay. There are some segments of the patient population that definitely need longer lengths of stay. It would be valuable if we could identify those better. The inpatient versus outpatient detox and rehabilitation treatment—there is a debate going on about the relative value of each. So, I think the more evaluation studies that could be done in this area, the better it would be.

Just to put alcohol treatment in the perspective of medicine in general, we need to remember that there isn't agreement on the use of tonsillectomies, which is a more discreet operation, because of lack of evaluation studies, I think.

Chairman **CRANSTON**. The study of the contract program reported that the length of stay for VA inpatient treatment for alcohol and drug dependent patients has been reduced from 28 to 21 days at most VA hospitals. I understand this reduction was implemented in response to the VA's use of the DRG based funding allocations. Is that correct?

Dr. **ERRERA**. I don't know if that is correct, sir. I know it has been reduced, and I know that there is a national trend, not just in the VA but across the country, to reduce lengths of stay. I think in some situations we may have gone too far.

Whether this was just DRG-driven or part of this whole thrust we have of moving people out of the hospitals faster, I am not sure.

Chairman CRANSTON. Does Dr. Suchinski know why it has been reduced?

Dr. SUCHINSKI. I think it is a combination of factors. Both the DRG's and the general feeling in the country right now that we want to reduce the length of stay, and the drug and alcohol programs are a part of that.

Chairman CRANSTON. Dr. Errera, how does a 21-day length of stay compare with the practices of effective programs at non-VA hospitals? In your professional opinion, is it sufficiently long for detoxification and completion of treatment?

Dr. ERRERA. If you look at what the private sector does, the treatment is much longer.

Chairman CRANSTON. So, professionally, what is your view of this?

Dr. ERRERA. Addiction is a chronic disease, and these are very chronic problems. Not too many patients get cured in 21 days; however, whether the more prolonged treatment has to be all in the hospital or a combination of inpatient and outpatient modules is why I think we need to do differential studies. There are some studies that are in the process of coming out showing that some of these populations can do well with a prolonged program which is primarily an outpatient component, whereas others particularly those with fewer support systems and complicating medical diseases may need long inpatient care.

Chairman CRANSTON. Do you believe that shortening the length of inpatient programs does increase the need and demand for residential halfway house care?

Dr. ERRERA. Absolutely, sir, and we see this also in more and more of our substance-abused patients being referred to domiciliaries.

Chairman CRANSTON. At the end of a 21-day stay now, what is being done to get them into an ongoing program outside?

Dr. ERRERA. There is a major effort to refer them to the program that we are talking about—the contract program—and/or to domiciliaries.

Chairman CRANSTON. Dr. Errera, Mr. Rosenbaum's testimony raised concerns that, given the serious chemical dependencies of the veterans referred to community residential facilities, the maximum length of 60 days for a VA subsidized study is inadequate and that the permissible 30-day extension is often not approved by the VA.

The study of the contract program also reported that a significant number of veterans continue treatment in halfway houses beyond the 60 to 90 day VA contract supported period and that the clinical staffs of most facilities believe that the maximum contract period of 90 days should be increased.

On its merits, what is your personal and professional view of the recommendation that the contract authority be for 90 days or longer with possible extensions for an additional 60 days for a minority of cases with well-established criteria?

Dr. ERRERA. I think it depends on the budget that is available. I would give the same answer I gave to OMB when they said: Why was I limiting a suggestion which we had made—which was turned down unfortunately—that we develop contract programs for chronic psychotics, in addition to the one we have for alcoholism?

And I said let's limit it to 60 days. Not that there are not many patients who could use more, but if there is a limited amount of money, I would rather start with that. So, my answer would be: Yes. I think they could use more, but it is a function of what is the overall budget that is available.

I am not aware that we in the Central Office will turn down such requests. I think what happens is that, when the facility runs out of money, they have to decide how they are going to use the money that is available to them.

And this also resulted from this 1-year "war on drugs" increase that we got which built up expectations, and then we had to knock it down again.

Chairman CRANSTON. I am seeking to augment the VA's drug and alcohol treatment budget with funding that would be authorized in the antidrug initiative that is currently being developed by a task force of Senators. If you received additional funding, do you think it would be beneficial to allow for extended stays, as Mr. Rosenbaum and others recommend?

Dr. ERRERA. Yes, sir.

Chairman CRANSTON. Dr. Koretzky, please describe the different types of alcohol and drug abuse treatment programs operated at the Fort Howard VAMC and the basic characteristics of your patients.

Dr. KORETZKY. Yes, sir. Fort Howard is not in the drug business, so to speak. Supposedly, we have only an alcohol treatment program, which includes—I say supposedly—advisedly, I will explain that in a minute—we have an alcohol detox program, which is about 1 year old now. It was started because there was such a tremendous demand in the Baltimore area that the other VA facility in town couldn't handle it.

Then, we have a 17-bed 28-day alcohol dependency treatment program which is 14 years old; and then, we have some aftercare available, an antiabuse clinic and mental hygiene clinic. These last are very small and limited, and they are fairly new at our particular facility.

The detoxification patients we get in who have alcohol as part of their problem often enough—maybe the majority of cases, but I don't have the exact figures—have got drug problems as well. So, our physicians in the medical unit where the detox takes place end up detoxifying for other drugs often enough, as well as alcohol.

So, poly substance abuse is rampant, as I am sure no one is surprised to hear. After being in the detox program, all of the veterans are screened; some of them come into our own 17-bed alcohol dependency treatment program, and they are all offered aftercare to the degree that they need it.

They are carefully screened. We have a little problem; we can't directly refer them all the time. Sometimes we have to discharge them for reasons of waiting lists and also because you end up getting less money if you directly transfer them, although we manage in the cases where it is clinically clearly necessary to make the direct transfer, anyway, even though it is less effective financially.

Mr. STEINBERG. Are you talking about direct transfer to a residential program?

Dr. KORETZKY. No, sir. I am talking about direct transfer within the hospital from a detoxification program, which is strictly medical with some mental health component, to a rehabilitation program—a 28-day rehabilitation program—also within the hospital.

Mr. STEINBERG. And when you say you get less money, you mean less reimbursement under the RAM. Is that correct?

Dr. KORETZKY. Yes, sir. You have to be discharged.

Senator ROCKEFELLER. Mr. Chairman, I wouldn't object to asking a question if I could be permitted to do so. [Laughter.]

Chairman CRANSTON. Yes.

Senator ROCKEFELLER. Thank you. I am curious about the description in Mr. Rosenbaum's testimony of the much more difficult problems experienced veterans who are alcoholics and addicts than nonveterans. You refer to little hope for recovery; paranoia; that somehow the Vietnam war has made them different, and it will stay that way.

And yet, there is also reference to a 60-percent recovery rate that strikes me as an enormously successful rate, and it sounds to me like it is uncommonly so, based on what I know from listening to reports about these things from the general media.

Mr. CHIAPETTA. I would like to comment on that. First of all, I think it is a credit to this particular modality. Again, a residential drug-free setting—if you will, a therapeutic community—is very unique. Just to gauge it for a moment, the kind of facilities that I represent—Phoenix House in New York City, Daytop Village, Waldon House in San Francisco, Second Genesis—these are very structured, long-term programs with a tremendous amount of discipline.

That is one of my greatest frustrations, that there is this distortion in the media. I don't think that this is a personal bias that the National Institute on Drug Abuse is doing a good job of getting out data—if you will, research data—on the effectiveness of drug treatment in our particular modality.

In our current month's newsletter, we can pretty much say that if we can sustain an individual in treatment beyond the first month, we have an 85-percent success rate in the residential therapeutic community. And the average length of stay is from 2 months to 2 years.

So, I don't think 60 percent, first of all, is very uncommon. I think it is a credit to the structure imbedded in a residential drug-free setting; and it is my greatest frustration that there is this stigma, this distortion of data—well, I don't want to say distortion—but a misperception about success in a residential drug treatment program or treatment in general.

I think we are doing some outstanding things, and apparently there is a gap or misinformation up here on the Hill; and it is a frustration, but I think we are working to alleviate that.

Dr. ERRERA. I would like to suggest that there is a self-selection element in this, too. In other words, not every alcoholic veteran is going to be willing to go into the kind of program that has just been described; and that may also influence the outcome.

In other words, there are many who have these problems who will not accept the rules and the regulations; and that may account for some of the failures.

Senator ROCKEFELLER. Would that be because a Vietnam veteran would see in a fellow Vietnam veteran a commonness of experience which would give him a greater sense of being in a group with whom he is going to be able to have sympathy and progress?

Dr. ERRERA. No, no. I think their programs make very, very special demands on people; and some, I would say, maybe the more put together or the ones who have the ability to tolerate this will stay with that program and might, therefore, be more likely to get better. But there are a lot of other patients who are not able to take these demands, and it is not because they are veterans.

Senator ROCKEFELLER. What kind then would select themselves out of Mr. Rosenbaum's program?

Mr. CHIAPETTA. I am not really sure. I know that there is a very rigorous weeding out process within the first month, as I alluded to; in our research data, that is when we lose the most people because they are realizing, my God, this is a very structured, discipline-oriented program. Everyone around here has an attitude; you know: drug-free, never touch liquor again or drugs; I screwed up, and now I have to rebuild my life.

And when you are coming in, you are chemically addicted; and you don't want to hear that. And there are tremendous demands placed on the individual from day one—this is it and you have to rebuild your life, and you have to work on job training skills; you have to work on reorienting yourself into the community.

It is cold turkey. There is no methadone maintenance component to it. So, it is just a very disciplined program; and I think it possibly ties to the regimented mentality of a military setting.

I mean, that is just a guess; but I did call some other therapeutic communities last night when I knew I had to testify, and I was informed that the structure is very comparable to the kind of training that one experiences upon going through the military process. And that might be why, if they can make it through the first month, they do have the 60-percent success rate that you alluded to.

Senator ROCKEFELLER. Are there such fundamental differences between the way his program works and the VA program works that if, for example, the VA program was extended to 60 days or 90 days—or what Mr. Rosenbaum would wish—that the outcome of success and failure would be roughly comparable?

Mr. CHIAPETTA. I think so, if I understand your question. Yes. The average length of stay in his program, I think, was 9 months, that he had alluded to. So, he is really arguing for the 90 days and then the 60-day extension because——

Senator ROCKEFELLER. Mr. Rosenbaum's is 9 months?

Mr. CHIAPETTA. Correct.

Senator ROCKEFELLER. Oh, so there is no possible comparability there?

Mr. CHIAPETTA. No, and he does make a point that a lot of times they have to actually transfer individuals who have gone through treatment—veterans—upon that 60 days because that is the end of their funding for that particular individual; and then they have to try and find another setting for that person.

If you are familiar with the logistics of rehabilitation, it is very detrimental to disrupt someone's rehabilitation once they feel like they have finally started to get the hang of it. And there is a certain camaraderie with other individuals who are going through treatment at the same time.

Senator ROCKEFELLER. Just one final question. Who is it that thinks it is better for the vet and the nonvet to be together in treatment programs? Is it the vet coming in feeling it would be better, or is it the professional knowing from experience that it will work better?

Mr. CHIAPETTA. I don't know. All I can do is comment on the structure; and the structure is, in addition to Mr. Rosenbaum's program, I will give you another example.

We have a program in Detroit, MI, called Sharehouse where they are integrated upon day one; but at the same time there are these specialized programs, as Dr. Koretzky alluded to, that are made available to the vet because there are additional needs that they have such as the post-traumatic stress syndrome and others.

So, they are integrated, but at the same time, there is a sensitivity to the fact that there are going to be some special accommodations that need to be made to the vet.

Senator ROCKEFELLER. And in that Napa program, what kinds of accommodations are made for the approximately 20 percent—I guess that was your figure, the 20 percent in Baltimore—what kinds of different accommodations in the treatment program are made for them as opposed to the nonveteran clients?

Mr. BARTHOLOMEW. As far as the in-house treatment, we send them back to the facilities. Once they enter our facility, they are there 4 to 6 months for completion. Any needed things the vet is returned for that. Any type of followup, they are returned to the VA. We use that resource for the veterans.

As far as being transferred from program to program, we don't do that.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. CHIAPETTA. Senator, if I could just comment, one of the things that a residential program does for the in-house vet, there are a lot of group meetings—which would be called rap sessions—where they can verbalize some of their frustrations and their pain.

Although we have generic rap sessions among all the residents who are housed in a residential therapeutic community, the vets basically meet among themselves periodically, once or twice a month, and can hammer out some of their own personal frustrations.

Senator ROCKEFELLER. So, they are mixed, but they also have a chance to relate together as veterans.

Mr. CHIAPETTA. Exactly.

Senator ROCKEFELLER. Thank you.

Chairman CRANSTON. Thank you, Jay. Dr. Koretzky, which of the programs or approaches that you employ are in your view the most successful?

Dr. KORETZKY. The ones that we have at Fort Howard, it is hard to compare one against the other. We have several types of programs going on sequentially at the same time, so I am not sure if I can answer your question, sir.

Chairman CRANSTON. I guess that is about the best way you can answer it. [Laughter.]

Dr. Errera.

Dr. ERRERA. Senator Cranston, you mentioned if there were additional funds; I would like to go back to that. I think, from our point of view, there is a limit as to how much additional funds we think should now go into this contract program, if it went beyond the $10 million, let's say, the figure that we felt was what we needed instead of the $5 million.

What we would prefer and what we think would give us a better return would be to use additional funds to expand our ambulatory care capability.

Chairman CRANSTON. As you know, we are wrestling in the Congress and in the country with the drug problem. It has become a major concern in the country and in the Congress. Can any of you say with confidence that you know how to deal with the substance abuse problems? Set aside alcohol, but for other drugs—do we really know how to cure it in an individual?

Dr. KORETZKY. I could respond to that. I wouldn't say cure it, but we know there are some very obvious things that we are not doing; and it is not going to cure the problem. But from the treatment point of view, in the Baltimore area at least, for veterans and for individuals who don't have private funds or good insurance, there just aren't enough treatment resources for drug abuse.

Chairman CRANSTON. I know there is a long waiting list in most communities; but when people get in, do we have assurance, do you have confidence that you can cure someone of the addiction?

Dr. KORETZKY. In my estimation, for a particular individual, you cannot be sure until he goes through the treatment. Mr. Chiapetta was talking about what I would call motivation. An individual's motivation, what he has to work with psychologically, and the environment out there—which we have some impact on with our programs now—these are key factors.

I wish I had an answer for every individual.

Chairman CRANSTON. Dr. Errera.

Dr. ERRERA. We have a 50-percent chance of not curing, but of being able to help the person significantly and have them stay off the addictive substance.

Chairman CRANSTON. If someone comes in with a high motivation and desire to be cured, do you have a good chance then of curing that person?

Dr. ERRERA. It is a better chance, but again, there are all kinds of factors like genetic factors. We are finding out a lot, that different people have different susceptibilities, and may have a greater or lesser facility for getting off the addictive substance.

Chairman CRANSTON. Do you have any suggestions as to how we are going to learn more about what can lead to a higher success rate of ending the addiction?

Dr. ERRERA. You have a wonderful laboratory in the VA where there are over 100 different substance abuse treatment facilities, and I think we shall be following the different treatment approaches that we use and assess them—a kind of ongoing evaluation. Yes.

Chairman CRANSTON. That is not done much now, is it? And that is why we need more money for evaluation.

Dr. ERRERA. Yes, sir.

Mr. CHIAPETTA. Senator, I think the key is really in linking the individual with the proper treatment. Often, when we talk about substance abuse treatment here in Washington, there is this generic mentality that everyone is just wrung through an assembly line or a factory, and that drug treatment is very constant and the same for all individuals.

There are various programs and approaches and modalities that we need to be sensitive to. I think that is a key. For instance, linking someone who is a heroin addict to a methadone maintenance component because they do need that constant, sustaining nurturing that methadone provides.

Some people can focus well in a residential drug-free program, where there is total abstinence; other people need an outpatient component. Other people need detox; other people need halfway houses. So, I think, if anything, we need to be more sensitized that drug treatment is not just a generic mill that we push people through, that there are various specialized services that the individual needs; and if you did that, we would probably have greater success rates.

Senator ROCKEFELLER. Can I follow with just one question, Alan?

Chairman CRANSTON. Yes.

Senator ROCKEFELLER. I go back to this staggering figure of 60 percent, and it is divided into two categories. One is abstinence, and the other is drastically reduced consumption levels, which means that some part of that must work entirely, at least for a period of time. So, the chairman's question about a way of getting somebody entirely independent of chemical abuse evidently does work, in answer to his question.

There is a way, but it takes at least 9 months.

Dr. ERRERA. No. In 50 percent of the cases, you will get abstinence. In their program, they get 60 percent, I think because they have a restricted sample; they don't take everybody.

Senator ROCKEFELLER. But help me understand what I am not understanding then because the word "abstinence" to me is a fairly clear English word. It means "abstain from," and I assume that means for a substantial or permanent period of time.

So, in answer to the chairman's question as to whether or not there is a way to do it which can prove to be successful predictably, your answer has to be yes, even though you may not be able to pin down why the answer is yes.

Mr. CHIAPETTA. My response was that I think for each individual, one particular approach works better than others. If you placed a bunch of people who would not be very receptive to a very restrictive, discipline-oriented program like a therapeutic community, your success rate would probably not be great.

But that is why there is this weeding-out process that takes place in the first month. You also couldn't place a bunch of IV drug abusers in a program that was drug-free. I mean, there is a reason why we have methadone maintenance programs, because people need to maintain some sort of subsistence level.

So, is abstinence possible for everyone? Is that your question? I would say that it is not.

Senator ROCKEFELLER. I was not asking that question. You know, it is not 60 percent of kids in America who graduate from high school, I think. I mean, there certainly aren't 60 percent of Americans who go from high school through college. So, the 60 percent is a fairly compelling figure. I may have pressed my point sufficiently.

Dr. ERRERA. Senator Rockefeller, if you think of alcoholism or substance abuse like a fever, it is an end product; and there are many different reasons for the fever. There are many different reasons for the alcoholism. And so, there will be different treatment approaches depending on the underlying etiological factors.

So, it is not that there is one solution to the problem. Like the fever, if it is caused by bacterial infection, you can give antibiotics; but if it is caused by something else, you may not want to. So, this is why we can say there is a 50-percent cure rate; but depending on the etiology and what the patient's support systems are, different things will work for different people.

So, there is not one solution because it is a potentially multidetermined entity such as a fever rather than a single specific disease, such as pneumococcal pneumonia.

Chairman CRANSTON. The 60-percent figure is 60 percent of those who complete the program and then stay off?

Dr. ERRERA. Complete the program.

Chairman CRANSTON. Yes.

Dr. KORETZKY. There are some common elements to successful treatment, I believe, that we could identify which Mr. Chiapetta has talked about. There is the detoxification phase, getting the drug out of the system safely. You give support to people. You need opportunities for people who have a lot of denial, to be confronted; and that works best in a peer group setting often.

You need to wean people over time away from the drug culture and away from their own psychological dependence on the drug. I could go on and on. There are some things we know about successful treatment, provided that the individual is ready to be treated, which is a big key.

Chairman CRANSTON. How well is methadone working?

Dr. KORETZKY. I have no experience working with methadone programs myself.

Chairman CRANSTON. Those of you who do, do you find it a reasonably successful way of dealing with the problem?

Dr. ERRERA. It is a useful treatment modality for a segment of the population. Again, that is the kind of thing we need to identify—which segment.

Chairman CRANSTON. Yes. Dr. Koretzky, would you describe briefly the contract program, including how many facilities you contract with and how many veterans you place?

Dr. KORETZKY. At Fort Howard, we currently have four programs we are contracting with, three in the Baltimore area and one at some distance that we don't use too much. One of them is Friendship House; Mr. Bartholomew is the head of that. We have two others, Fayette House in the inner city of Baltimore and Damascus

House, which is in a little more suburban area, a blue-collar area of Baltimore.

I can give you the exact figures of placements if you like. When I got there in 1983, that year there was only one placement according to the records. In fiscal year 1984, there were 10; in 1985, we had 19; in 1986, we had 23; in 1987, 44. In 1988, in the first quarter, we had 21 placements; in the second quarter, we had zero due to the fact that we ran into some funding problems. In the third quarter, we placed about six. So, it had been growing in our particular facility.

These are referrals out of a 17-bed alcohol dependency treatment program. We are now finding that other patients from our alcohol detox program, which is a much larger number of patients because they come through quicker, could use halfway house placement as well.

Chairman CRANSTON. What factors contribute to a decision to recommend placement in halfway houses?

Dr. KORETZKY. I think lack of support systems and motivation are the two main factors. Maybe Mr. Kerr, who actually has handled individually a lot of patients, would like to comment on that.

Mr. KERR. Each person who goes through the 28-day inpatient program is given a battery of psychological testing. He is also given a counselor and a vocational counselor group therapist and a psychologist. During his or her 4 weeks there, they are evaluated to their needs.

Are they employed or employable? Do they need training? Do they have a home to go back to? What is the family situation, and what is the historical background?

When the staff gets together in the multidisciplinary mode, a decision is made to refer which patient to which house. By saying that, I mean: Will this patient fit well in this house, or will he fit better in another house?

Then the patient is sent out to be interviewed by the director or the house manager; and if they are accepted, they come back. They have 1 week left in the program, and the contract is established.

Now, the 60 days we started with work very well. We have given some extensions of 30 days for other places. Each person who goes into that halfway house will be hooked up with Maryland State vocational rehabilitation, if he is not service-connected. If he is service-connected, he will be hooked up with our vocational rehabilitation people at the Federal building.

If he still has GI bill, he will be hooked up with some training facility, where he is given some vocational tests to make some determination as to what his needs might be.

I guess one of the biggest problems we ran into was finding houses that were mechanically capable of handling the needs of our patients, having a dietary service, a meal, a regimen for people who might need a salt-free diet and might need other things, the safety of the house, the educational or the counseling process that this house provided for this person or persons, and our followup and our backup with counseling assessment, our antibuse clinics, individual counseling, and all the other things.

To sort of reflect on this, I went in a halfway house 21 years ago approximately, and the halfway house had no manager. They had no dietary thing; they had rooms where people could come and live, and they tried to help people.

In our process today, I think what we are doing is we are saying that these addictable types are people who do need and who are in need of a very structured facility. I think that the way our contracts with houses are handled and how we do it as a team gives us a lot more productivity.

Chairman CRANSTON. Thank you. Dr. Koretzky, do you have adequate funding for contract halfway house care for all veterans who are recommended for such care?

Dr. KORETZKY. We did until this fiscal year; we do not at this time.

Chairman CRANSTON. Would you like to be able to place veterans there for stays longer than 60 or 90 days?

Dr. KORETZKY. In some cases, yes. I don't know the percentages. I think some of our veterans do stay longer. They get switched over to State funding, which is much less; and I think it is a minority that need it, and I think it would be nice to be able to do that.

Chairman CRANSTON. But you could do it with shortened preceding hospital care?

Dr. KORETZKY. I think not. We like our program the way it is. It has been developed over 14 years, and I would like to keep it that way if we can.

Chairman CRANSTON. I would like to ask a general question. What measures do any of you feel are the most appropriate to try to prevent people from turning to drugs in the first place?

Mr. BARTHOLOMEW. Education. Total education.

Dr. KORETZKY. I will second that. Very, very aggressive.

Chairman CRANSTON. What sort of education is going to work?

Dr. KORETZKY. I think you have to have total saturation. The cigarette problem—smoking education is becoming accepted now in the mainstream that smoking can harm your health. I think something along those lines for drugs. I think the kind of education has got to be realistic; it can't be scare tactics that are not totally accurate, such as we had, I think, in the 1960's, and the youth of that period disregarded or ignored that because they saw that it just didn't make sense.

So, it has to be realistic, and I think it has to be pervasive. I think the climate is right for that now.

Chairman CRANSTON. Yes.

Dr. ERRERA. I would agree with education, but I think the fact that we have double standards makes it difficult. In other words, it is bad to take certain drugs, but it is all right to take liquor. Since people usually don't listen to what you say if it is not consistent with what you do, that message is problematic.

Senator ROCKEFELLER. Can I interrupt, Mr. Chairman, for just one question?

Chairman CRANSTON. Yes, you may.

Senator ROCKEFELLER. Have you gentlemen seen some of the textbooks that are being used now in elementary schools with respect to drugs, including alcohol? Do you find them useful?

Mr. BARTHOLOMEW. Yes, I do. My grandson is only 7 years old, and he brought a little magazine home that pertains to Alcoholics Anonymous from his school class. And he said: Is this what they teach you in Alcoholics Anonymous, Grandpop? And that is what they are talking about. That is where it starts, right there.

Senator ROCKEFELLER. I have always believed that what we have to do in this country is to start drug and alcohal education in kindergarten as a matter of course, by which I don't mean as a matter—it is a course. It should be a course; it is something that everybody should take every year all the way through the 12th grade. I guess that is what you would mean by pervasive education.

Dr. KORETZKY. That would be part of it.

Senator ROCKEFELLER. But starting literally in the kindergarten classes.

Dr. KORETZKY. Yes; if it were done, of course, the way you are suggesting, as part of a health curriculum. Of course, this is what happens to your body if you do such things; of course, these are the kinds of things that could happen to you.

Yes. Give it credibility; make it part of a general health regimen. I would think that would be a good idea.

Mr. KERR. I also think that family education for all members of the family—the immediate family and the extended family—because alcoholism and alcohol use in the family for many years has been accepted. And you know, they would say things like: He is just sowing his wild oats now; he will be OK. And that is one of the things—he is still out there sowing them.

Chairman CRANSTON. Mr. Chiapetta, are there many centers that treat women or adolescents exclusively?

Mr. CHIAPETTA. No, there are not, Senator.

Chairman CRANSTON. Do you think we need them?

Mr. CHIAPETTA. I think in certain areas where the need is significant, they are needed. Some of the facilities that I work with do specialize in treating children, one of which is called the Abrackphus Foundation in Pittsburgh, PA. It has an excellent record in working with adolescents who have fallen prey to chemical dependency problems.

I think we also have a facility in West Virginia, if I am not mistaken. Also, on the issue with women, right now that is a real significant concern because of the growing ignorance about the problems associated with alcoholism in women. It is very pervasive.

Chairman CRANSTON. Dr. Errera?

Dr. ERRERA. In support of the notion of the importance of work with adolescents, I was told that there is a growing incidence of liver disease in adolescents.

Mr. BARTHOLOMEW. Mr. Chairman, I am also the director of the Safe House, which is a women's halfway house, in south Baltimore, with my assistant, Rosemary Summers, who is here with me. If you want to know the need for women's halfway houses, she can definitely tell you.

Chairman CRANSTON. Let me ask this generally for whoever chooses to respond. Where feasible, do you encourage the involvement of family members and try to establish contact during a veteran's stay at a residential facility? And if so, how do you ensure that that kind of a family relationship is maintained?

Dr. ERRERA. Let me respond because a lot of our veterans don't have families. Yes, certainly if there is a family, that is essential. But one of the reasons some of our patients have problems and sometimes may need longer lengths of stay in our programs is the fact that many of our veterans are really quite isolated and have never been in any support systems. They have lost or burned their bridges, and for them then, the significant other becomes crucial, if they are fortunate enough to have one.

Chairman CRANSTON. Any other comments on the need for family involvement?

[No response.]

Chairman CRANSTON. Dr. Errera, in the VA testimony, you estimate that extension of the contract program will result in costs of $10.1 million for each of the next 5 years. Is the VA assuming both no increase in demand and no inflation in the per diem over the next 5 years? And if so, is that realistic?

Dr. ERRERA. It needs to be corrected for inflation, sir; and I think it reflects the limitation on our existing inpatient and outpatient treatment capacity, which is why I said that before we would expand the contract dollars, we should expand our ambulatory care capability.

Chairman CRANSTON. What about demand?

Dr. ERRERA. That is why we need more outpatient care. I think we need a greater ambulatory care capacity because the demand is out there. Many cities could use outpatient facilities, and many of the existing facilities need to be expanded because they are overtaxed.

Chairman CRANSTON. Yes.

Dr. KORETZKY. I would like to second that.

Chairman CRANSTON. Do you think the outpatient facilities are more cost effective?

Dr. ERRERA. I would start with expanding the ambulatory care programs. Yes.

Chairman CRANSTON. You think they are more cost effective?

Dr. ERRERA. I think they are more cost effective for some of our patients, especially if we know selectively who needs to be treated in the inpatient.

Chairman CRANSTON. Dr. Errera, Mr. Rosenbaum on page 7 of his statement comments that VAMC in Menlo Park, Palo Alto, San Francisco, and Livermore are not participating in the contract program. It seems unusual that a majority of the large medical centers in the bay area don't refer veterans for care and residential treatment programs.

I am also aware that the program here in the Washington, DC, area is very small. What accounts for this low participation of so many major medical centers in the contract program? And is the amount of funding available for the contract program the main limiting factor?

Dr. ERRERA. Why Menlo Park doesn't do it is that Menlo Park is very special. My guess would be that they have something else that they are using. I don't know what it is, but they are very ingenious and they are very good at what they do.

Some programs—for example, my former station, West Haven—didn't use it either because we used an in-house halfway house that we developed. So, I don't know the answer as to why some of them don't. Some of them I think choose not to. Do you know, Richard?

Dr. SUCHINSKI. It very much depends on the actual center's attitude toward treatment. Money is a limiting factor in some situations; but in some situations, they just choose not to do so.

Chairman CRANSTON. Are you saying that the funding is not a delimiting factor?

Dr. SUCHINSKI. It is in some situations.

Chairman CRANSTON. It is in some situations. All right.

Dr. KORETZKY. I have a comment on that also, if I may, sir? It is pretty tough for a halfway house to meet VA standards. They are very strict standards, and I think that is good; but I know in the Baltimore area, Mr. Kerr has worked closely with a number of houses over the years, trying to get them accredited.

These institutions, by and large, are not well funded themselves; they are started by dedicated people, and a lot of times they can't meet the physical or safety requirements of the program. You have to work with them over a period of time. That can be very frustrating, and it is sort of a disincentive. It takes a long time to develop these programs, I think, and to use the funds in the best way, which is why—as I mentioned earlier—we suddenly had to cut back after several years.

Chairman CRANSTON. Does the Central Office take steps to encourage individual hospitals, particularly where there are high incidences of chronic drug and alcohol use, to establish contracts with residential community facilities?

Dr. ERRERA. We do when we have the funds. In other words, the year we had an additional amount of money, we did. Right now, we don't any more because $5 million won't carry us beyond where we are going.

I would like to make a comment in defense of the safety standards in use for our contract facilities. These are Federal regulations—fire and safety ones—and I think they are very important; but as Dr. Koretzky pointed out, you need the financial continuity because, once you encourage a contract facility to get up to those standards, then they need to continue to receive patient referrals for more than 1 year.

Chairman CRANSTON. Is there $5 million or $10 million in the budget for this purpose?

Dr. ERRERA. There was originally only $5 million. Then, last year, there was a one $10 million jump, which was a problem. My understanding now is that there is going to be $10 million; that is what we asked for.

Chairman CRANSTON. For 1989?

Dr. ERRERA. Yes. We feel that is a satisfactory amount to meet the need given our current inpatient and outpatient treatment capabilities.

Chairman CRANSTON. Dr. Errera, on page 7 of Mr. Rosenbaum's testimony, the issue of per diem rates and approval of extensions comes up. Is it correct that the 30-day extension is approved only by Central Office, not by the contracting medical center?

Dr. ERRERA. No, sir.

Chairman CRANSTON. Are per-diem rates set here in Washington?

Dr. ERRERA. There may be a review process, but they settle it out in the field; it is a local decision.

Chairman CRANSTON. Both for 30 day and the per diem?

Dr. ERRERA. Yes, sir.

Chairman CRANSTON. Dr. Koretzky, do you have any comment on that?

Dr. KORETZKY. I would agree with that. Our supply service contracts individually with halfway houses; and if we need a 30 day extension, our chief of staff of the medical center has to approve it.

Chairman CRANSTON. Dr. Errera, when the contract care report was transmitted to this committee, the letter accompanying the report stated that data regarding readmission rates was still being collected and would be reported to us later. Do you know the status of that?

Dr. ERRERA. It was forwarded to you.

It is going through the system. I don't believe it has gotten to you yet.

We have seen it. I guess it is on its way to you, sir.

Chairman CRANSTON. Find out where it is and get it to us.

Dr. ERRERA. Yes.

Chairman CRANSTON. Does the VA have any data in general about readmission rates to any of its own treatment programs?

Dr. ERRERA. I hope they encourage them when it is indicated, sir.

Chairman CRANSTON. Are you collecting it?

Dr. ERRERA. On readmission rates?

Chairman CRANSTON. Yes.

Dr. ERRERA. We don't have the capability. In other words, I don't know what is going on in my shop. I keep saying that if I were running a shirt store, I would have trouble because we don't have the hardware to give us this kind of data. No, sir. We would love it.

Chairman CRANSTON. Would any of the others of you like to comment on readmission rates?

Dr. KORETZKY. I can tell you with certainty that, in our alcohol dependency treatment program, our readmission rate is zero; and that is not because we are curing everybody. But we have a policy that they get one chance to go through the program.

Chairman CRANSTON. Dr. Errera, do I understand that you believe it would be valuable to have an evaluation study of the VA's own inpatient and outpatient substance abuse programs along the lines of the study of the contract programs?

Dr. ERRERA. I wouldn't want to contract it out.

Chairman CRANSTON. No?

Dr. ERRERA. I think a study needs to be done and we should do it within the Department, but I think this is true not only of alcohol, but of most of the treatment modalities. That is why I mentioned tonsillectomies as an example.

Chairman CRANSTON. That completes this section, and I thank you very much for your testimony. You have been very helpful.

We now move to the veterans' organizations panel. I would like to welcome Phil Riggin, director of the National Legislative Commission, accompanied by Phil Wilkerson, assistant director of the national veterans affairs and rehabilitation commission of The American Legion; Stephen Edmiston, deputy national legislative director of the Disabled American Veterans; Geraldine Chittick, chairman of the legislative committee, Gold Star Wives of America; John Bollinger, associate legislative director of the Paralyzed Veterans of America; James Magill, director of the National Legislative Service, accompanied by Fred Juarbe, director of the National Veterans Service of the Veterans of Foreign Wars; and Richard O'Dell, vice president and chairman of the Committee on Advocacy, accompanied by Paul Egan, legislative director of the Vietnam Veterans of America.

I welcome all of you. Ms. Chittick, we especially welcome you since you are not with us quite as often as the other panelists. We would like to hear from you first, and then we will hear from Phil Riggin. Please observe the 5-minute rule. We are beginning to run out of time.

STATEMENT OF GERALDINE B. CHITTICK, LEGISLATIVE CHAIRMAN, GOLD STAR WIVES OF AMERICA, INC.

Ms. Chittick. Thank you, Mr. Chairman and members of the committee. On behalf of the membership of Gold Star Wives of America, I thank you for the invitation to appear before this committee to present the views of our organization.

We welcome this opportunity to express our appreciation of the committee's high priority placed on the concerns of compensation recipients, and we appreciate this occasion to review our concerns in the area of DIC.

The membership of Gold Star Wives is open to those whose husbands died while on active duty or of disabilities incurred during such service, and the legislative concerns of our organization are restricted by our constitution to those pertaining directly to Gold Star Wives or Gold Star Sons and Daughters. This will explain the absence of a stated position on matters other than those pertaining to DIC.

In regard to S. 2011, although we recognize the need for fiscal restraint in Government spending, we do believe an increase in monthly rates of DIC is necessary to prevent more severe erosion of benefits than is presently occurring for the majority of our membership.

Not all essential items are taken into consideration in the computation of the CPI. For instance, spiraling costs of prescription drugs are not truly reflected in CPI figures used to calculate COLA's. In 1 year, the CPI increased 1.9 percent, while the cost of prescription drugs climbed 8.6 percent.

We favor legislation to provide a COLA at least equal to that of Social Security, although we do not believe DIC should necessarily be equated with Social Security.

Gold Star Wives continues to be increasingly distressed as year after year goes by under the current DIC formula set 20 years ago with the growing differential between top and bottom of the 23 rate scale. We do thank you, Senator Cranston, for your consideration of the resolution coming from our 1987 Gold Star Wives Convention, asking for a one-time flat rate increase in DIC rates and the cost figures provided by the Veterans' Administration.

H.R. 4423, introduced April 20, 1988, does reflect a proposal based on the appropriated funds being equally divided. We acknowledge the serious drawbacks of such a proposal, and we are disappointed that the figures provided indicate that the great concentration of recipients in the lower rank categories would prevent the proposal from providing the relief anticipated. This would indicate even more forcibly the urgent need for total DIC revision.

Gold Star Wives continues to believe the proposal for formula revision advocated by our organization for the past 10 years merits consideration; and that is an equal base pay on which all COLA's would apply, plus a fixed amount based on rank and length of service, and it might well include degree of disability and circumstances of death.

Such a plan would not be made obsolete by inflation. The committee is urged to evaluate every possible solution which would provide a just and fair revision of the DIC Program.

And in regard to S. 2267 on indexing, in spite of the unfortunate confusion which resulted from the 2-month delay in the reflection of the 1988 increase on recipients' payments, we do continue to be opposed to the indexing of compensation rates.

Annual congressional review of the program would, we believe, encourage more direct consideration of DIC formula revision, as well as provide a valuable vehicle for other desired changes in veterans' programs.

Thank you again for the opportunity to appear here this morning. I will be pleased to address any questions.

Chairman CRANSTON. Thank you. Mr. Riggin.

[The prepared statement of Ms. Chittick appears on p. 182.]

STATEMENT OF E. PHILIP RIGGIN, DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION, ACCOMPANIED BY PHILIP R. WILKERSON, ASSISTANT DIRECTOR, NATIONAL VETERANS' AFFAIRS AND REHABILITATION COMMISSION

Mr. RIGGIN. Thank you, Mr. Chairman. With me is Phil Wilkerson of our Veterans' Affairs and Rehabilitation Commission. He is prepared to summarize our statement; and both of us, Mr. Chairman, will be available for whatever questions you may have following that presentation.

Mr. WILKERSON. Mr. Chairman, the American Legion appreciates the opportunity to share its views on several pieces of legislation affecting veterans' benefits.

The American Legion supports the exclusion of moneys received by veterans and survivors under the agent orange product liability settlement from countable income for nonservice and death pension purposes, as well as eligibility for VA medical care, as proposed by S. 1805.

S. 2011 would provide a cost-of-living increase in the rates of disability compensation and DIC equal to that authorized Social Security recipients. The American Legion believes that such COLA's should be at least consistent with increases in the CPI and which is equal to or exceeds the percentage by which benefits are payable under Social Security.

The American Legion is, therefore, strongly opposed to the provision of S. 2267 that would index future COLA's for service-connected disability and death benefits to the Consumer Price Index. We have found that Congress through the years has been fair and generous in providing for timely cost-of-living adjustments and benefits for service-connected veterans and their survivors.

Of equal importance is the fact that hearings on legislation relating to COLA's also provide a forum at which other important issues may be discussed.

We wish to express our support for the proposed increase in the annual clothing allowance and the extended entitlement to veterans requiring treatment for service-connected skin condition which damages their clothing. We further believe that veterans suffering from other types of service-connected disabilities which cause damage to clothing should likewise be eligible for this benefit.

With respect to S. 2268, it would make the eligibility criteria for the $150 plot allowance the same as that which currently applies to the burial allowance. The American Legion wishes to reiterate our strong opposition to any such proposal. We believe this further cut in burial benefits would be a disservice to veterans and impose an additional and unnecessary financial burden on the families of many deceased veterans.

Also included in this measure are provisions to permit the payment of the headstone allowance where a veteran's grave marker or memorial was prepurchased and to extend the State Veterans' Cemetery Grant Program through 1994. We are supportive of these proposals.

We would also have no objection to the amendment sought by S. 2269 and S. 2306. We have also been asked to comment upon S. 2105, which would extend the VA's authority to contract for drug and alcohol treatment in halfway houses and other community-based facilities. Since the initial extension authorized under Public Law 96-166, the program has continued to demonstrate that it is cost effective and a necessary means of providing care for veterans with drug and alcohol abuse problems.

The number of contracts with community-based facilities in fiscal year 1987 has expanded to 358 by some 94 VA medical centers. The VA currently has been forced to reduce the length of stay in hospital for this category of patient under their resource allocation model and place greater emphasis on the use of the less costly community-based programs.

The American Legion believes the extension of the VA's authority to contract for this type of care and treatment is essential and voice our strong support for S. 2105.

Mr. Chairman, this concludes our statement.

Chairman CRANSTON. Thank you very much. Now, Steve Edmiston.

[The prepared statement of Mr. Riggin and Mr. Wilkerson appears on p. 184.]

STATEMENT OF STEPHEN L. EDMISTON, DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. EDMISTON. Thank you, Mr. Chairman. On behalf of the more than 1.1 million members of the Disabled American Veterans and its Ladies Auxiliary, we appreciate the invitation to appear at today's hearing.

Mr. Chairman, the DAV supports the cost-of-living increase proposed by S. 2011. We note, however, that the proposed increase does not include an increase in the statutory K award. We would urge the committee to include an increase in the statutory award in any final bill approved by the committee.

Mr. Chairman, S. 2011 directs the Administrator to increase benefits by a percentage rate equal to Social Security adjustments. The DAV is concerned that the bill could be perceived as tantamount to leading to automatic indexing of VA disability compensation and DIC benefits.

As you know, the DAV is opposed to the indexing of compensation and DIC benefits and, of course, oppose that provision of Senate bill 2267. In any compensation/DIC cost-of-living legislation reported by the committee, the DAV would urge you to favorably consider including a provision to amend the definition of surviving spouse for the purposes of DIC benefits paid under section 410(b), as set forth in our written testimony.

In addition, we would ask the committee to favorably consider including a provision to extend eligibility for VA clothing allowance to those veterans using prescribed medications for service-connected skin conditions that either stain or otherwise damage their clothing, which is similar to that proposed by Senate bill 2267.

With respect to the other legislation pending before the committee, we have set forth our views in our written testimony; and I will conclude my remarks now and, again, thank you for the opportunity to appear here this morning.

Chairman Cranston. Thank you. Now, John Bollinger of the Paralyzed Veterans of America.

[The prepared statement of Mr. Edmiston appears on p. 199.]

STATEMENT OF JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR, PARALYZED VETERANS OF AMERICA

Mr. Bollinger. Thank you, Mr. Chairman. It is a pleasure for me to be here today on behalf of the Paralyzed Veterans of America and present our views. I appreciate the opportunity and thank you for inviting PVA to testify.

Mr. Chairman, PVA commends you for introducing S. 2011. By so doing, you have ensured that veterans, their dependents, and their survivors will once again be provided for at an appropriate level of maintenance. On behalf of the more than 2.2 million veterans who find themselves beneficiaries of disability compensation, and on behalf of the more than 300,000 survivors who are recipients of DIC, we thank you.

Regarding S. 2267, the administration has once again proposed legislation that would index compensation benefits to the annual change in the Consumer Price Index. PVA vehemently rejects this attempt to bypass the responsible authority of Congress.

This control should remain within this legislative body whose members can exercise the flexibility and fairness so vital in determining proper adjustments to compensation and DIC.

We support the enlargement of clothing allowance coverage to include those individuals who must use prescribed medication for a service-connected skin condition in instances where such medication stains or damages clothing. We believe this is an appropriate initiative.

Section 202 of S. 2267 addresses the topic of income exclusion as it pertains to pension benefits and DIC parents. This section would properly amend title 38 to include a more comprehensive reimbursement for casualty loss.

The administration has appropriately broadened the types of casualty losses which would qualify under title 38 and, at the same time, limit such exclusions to fair market value.

Section 304 of S. 2267 proposes to amend title 38 to give the Administrator the authority to require the disclosure of Social Security numbers of any person who applies for or is in receipt of compensation or pension. We do have a few concerns about this provision.

We are unclear as to the compelling reasons for requiring Social Security numbers. As the veteran community increasingly faces budget reductions and staffing cuts, we must wonder what amount of funds and resources will be utilized to conduct surveys, cross-references, and a variety of other possibilities based on Social Security identification.

When an individual claims he or she does not have a Social Security number, to what extent in terms of time and money will the VA go to validate such information?

Mr. Chairman, PVA is pleased to support extension of the VA's alcohol and drug abuse treatment program. We believe this program is an integral part of the comprehensive health-care delivery.

Public Law 99-166 required the Administrator of Veterans' Affairs to furnish to Congress a report detailing the cost and effectiveness of these activities. As a result of this report, it appears that the program has generally had a positive effect on the participants. And although we support the extension, we believe it would be appropriate for this committee to consider making the program permanent.

PVA supports S. 2269 regarding construction contract claims settlements and S. 2306, the VA Multiyear Contracting Act of 1988. We believe both amendments are proper and should be enacted.

Regarding S. 2268, PVA strongly opposes any effort made by the administration to further restrict eligibility for burial benefits. We believe such an attempt is misguided and inequitable. We oppose any initiative which denies a veteran who is now entitled and who has earned the benefits of this program.

Regarding the agent orange product liability litigation, we thank Senator Mitchell very much for his continued concern for the welfare of those veterans who find themselves beneficiaries of this nonservice-connected pension benefit.

We believe the exclusion of this specific payment is legally and morally sound, and we support the initiative; and once again, we commend Senator Mitchell for his concern for the well-being of this special group of veterans.

Thank you very much.

Chairman CRANSTON. Thank you very much. Mr. Magill.

[The prepared statement of Mr. Bollinger appears on p. 212.]

STATEMENT OF JAMES N. MAGILL, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. MAGILL. Thank you, sir, for the opportunity to present the views of the Veterans of Foreign Wars.

S. 2011 would provide a cost-of-living adjustment effective December 1, 1988. The VFW is totally in favor of this bill inasmuch as we clearly support a continued cost-of-living adjustment which is at least commensurate with the Consumer Price Index.

S. 2267 automatically would index rates of the veterans' disability compensation. We believe enactment of this administration proposal would have an adverse impact on the VA's compensation programs by eliminating or at least reducing congressional review of this vital program.

In the past, the Congress has been very compassionate and fair in addressing the needs of our Nation's service-connected disabled veterans; and we foresee no benefit to these veterans in substituting an automatic process for the personal attention of your committee and, for that matter, the entire Congress.

S. 2267 would also increase the annual clothing allowance paid to eligible veterans. The VFW supports that provision.

S. 2267 would authorize the Administrator to request a uniform service paying retired or retainer pay to an individual who collects that person's indebtedness to the VA by offsetting their retired pay. The VFW does not favor enactment of that provision.

While we certainly agree that veterans have a moral and legal obligation to repay any indebtedness to the Federal Government, we believe all collection attempts should remain within that particular agency where the debt originated.

This bill would also extend the Administrator's authority to maintain a regional office in the Republic of the Philippines. The VFW supports that.

S. 1805 would exclude payments made to veterans and their survivors under the agent orange liability court case. We are in support of that provision also.

S. 2265 would modify eligibility requirements for the plot allowance. If enacted, this bill would adopt the same criteria for receipt of the plot allowance as it mandated for providing the burial allowance. Inasmuch as the VFW opposed restricting the burial allowance, we certainly oppose this provision of S. 2268.

We do support the provision permitting the payment of a headstone or marker to the estate of the veteran who has purchased a headstone or a grave marker prior to his or her death; and we certainly support extending the cemetery grant program.

Finally, S. 2268 would repeal current law, which limits the amount of Federal funds that may be received under the State Cemetery Grant Program. The VFW is in support of the repeal of that limitation.

S. 2269 would repeal the requirement that the Veterans' Administration's settlements of construction contract claims in excess of $1 million be provided for in an appropriation law. The VFW has no objection to this bill.

The final bill before us today, S. 2105, would extend the Veterans' Administration's alcohol and drug abuse treatment program. The VFW supports that extension, and we would suggest that the committee possibly look into making this vital program a permanent program.

With respect to the operations of the Board of Veterans' Appeals, we have made our views known in our statement; and I will be able to respond to any questions you may have.

Chairman CRANSTON. Thank you very much. Mr. O'Dell.

[The prepared statement of Mr. Magill appears on p. 224.]

STATEMENT OF RICHARD E. O'DELL, VICE PRESIDENT AND CHAIRMAN, COMMITTEE ON ADVOCACY, VIETNAM VETERANS OF AMERICA, ACCOMPANIED BY PAUL S. EGAN, LEGISLATIVE DIRECTOR

Mr. O'DELL. Mr. Chairman, the Vietnam Veterans of America appreciate the opportunity to present its views at today's hearing. Apart from this hearing's focus on the Board of Veterans' Appeals, several items of legislation are also under consideration.

The first of these is S. 2011, which VVA supports. The second measure under consideration today is S. 1805. This bill would preclude the VA from counting money received from the agent orange settlement fund as income when determining eligibility for certain means tested benefits.

We view S. 1805 as a good measure. We would like to say, however, that it perhaps could be amended to include other needs based programs.

In regard to the Board of Veterans' Appeals, which is addressed at length in our formal statement, I will now defer to Mr. Egan, our legislative director.

Mr. EGAN. It is somewhat surprising that we have heard so little about the Board of Veterans' Appeals from any of the other panelists on this particular panel today.

In any event, production quotas and the use of bonuses powering those production quotas at the Board of Veterans' Appeals strikes us as being a particularly insidious practice, apart from the specific exemptions that were given to the Board of Veterans' Appeals, I believe in 1982 and 1985, respectively, from the merit pay system and from the performance appraisal system.

It may be that the Chairman of the Board of Veterans' Appeals has suspended the use of bonuses, but we find it very troubling that he is considering additional alternatives to replace those bonuses.

We believe that the existence of a production system, however practical it may be from the standpoint of moving a caseload, has to color the decisionmaking that goes on in individual claims. If the focus is on the amount of time available within which to adjudicate an appellate claim, that time factor has to influence the ultimate decisionmaking and the thoroughness of that decisionmaking.

Reasonable doubt at the Board of Veterans' Appeals is a term that is bandied around without any real, or at least satisfactory, definition being given to it. And we would recommend that, if this committee is considering a Board of Veterans' Appeals reform bill, that perhaps some definition be given to the term "reasonable doubt" procedurally.

Contrary to current practice, we would recommend that, in instances where there is a 2-to-1 vote in a section of the board in favor of the veteran, that the veteran be given the benefit of the doubt by having the claim awarded, rather than having the panel expanded.

In cases where the vote in a section is 2-to-1 against the veteran, we would recommend that this be the point when the panel is expanded. When panels are expanded, we would recommend that the same individuals who were on the original section not be part of the expanded panel, and that is especially true in claims that are back before the Board of Veterans' Appeals for reconsideration after having already been denied.

In cases when there is an expanded panel consisting of six people, we think that, when there is a 3-to-3 tie, reasonable doubt again ought to be resolved in favor of the veteran; and the claim ought to be allowed.

We think that the Chairman of the Board has much too much discretion and we would severely restrict his ability to influence the makeup of expanded panels and we would certainly restrict his ability to cast deciding votes. We think if he is to cast any vote, it ought to be restricted to a vote in favor of the veteran.

Our statement goes into a great deal of detail concerning the Board of Veterans' Appeals, and there isn't time here to go into all of that; but I will submit to this committee that, in spite of the Chairman's decision to suspend those bonuses, we at VVA intend to continue with our lawsuit because we think that many of the practices at the Board of Veterans' Appeals are inappropriate and, perhaps in some instances, even illegal.

Thank you.

Chairman CRANSTON. Thank you.

[The prepared statement of Mr. O'Dell and Mr. Egan appears on p. 234.]

Chairman CRANSTON. I do have some questions. I would appreciate it if you would be very brief in your responses because we are sort of running out of time.

In my prehearing question 6, I raised some concerns about the manner in which final BVA decisions are made when the original panel does not reach a unanimous decision. I appreciate your responses.

There is one related question I would like to address. Do you favor a change in the law to provide that a 2-to-1 vote for an allowance would be considered a final BVA decision, rather than by current requirement for a unanimous vote? One of you has already endorsed the proposal, but how do you all stand on that? I guess you have addressed that, Mr. Egan.

Would you all favor that kind of a change?

Mr. BOLLINGER. Senator Cranston, PVA could support that kind of change.

Chairman CRANSTON. Is there anybody who dissents from that kind of a change being advisable?

[No response.]

Chairman CRANSTON. Does the VFW concur?

Mr. MAGILL. Yes.

Chairman CRANSTON. In the case of a 2-to-1 vote for a denial and an accompanying expansion of the panel, would you favor a change in the expansion procedure so that the expanded panel is chosen in a random fashion rather than selected by the Chairman?

Mr. EGAN. If I omitted saying that in my statement, yes, we would agree with that.

Chairman CRANSTON. Any dissent on that point?

Mr. EDMISTON. We don't see any problem with the current system. We think it works fine.

Mr. BOLLINGER. Thank you. I was just going to say, in actuality, we don't recognize a problem; but with so many of the other issues, I think it is a degree of perception. And that being the case, I would agree with you.

Chairman CRANSTON. Good, thank you. Any other comments?

[No response.]

Chairman CRANSTON. The statistics presented to me by the BVA in response to my prehearing questions clearly demonstrate that claimants who have hearings before a travel board section prevail more than those seeking a BVA review in any other form. For instance, in fiscal year 1987, the allowance rate for claims heard by travel boards was 30.6 percent versus the next best rate of 19.5 percent allowances at hearings before the BVA in Washington, DC. To what do you attribute this discrepancy? Any one of you wish to respond?

Mr. EGAN. Mr. Chairman, I am not quite sure how to explain those discrepancies. We know that, in addition to the traveling boards, that cases that are remanded tend to have a better percentage of ultimate allowance as well.

From the description provided this morning by the chairman of the Board of Veterans' Appeals, it sounds as if quotas are being parceled out to the veterans' organization to be heard and approved by these traveling boards. I mean, it sounds as though it is some sort of a traveling public relations carnival in which claims are willy-nilly approved for the purposes of showing the veterans' organizations in the field or the veterans themselves in the field that the VA is doing what it is supposed to be doing.

Chairman CRANSTON. Any other comments?

Mr. EDMISTON. The DAV has always viewed the traveling boards as an opportunity for our service officers in the field to expand their representation; and it is a fact that they obviously attempt to find those cases that, in their view, have the greatest merit and possibility of success and seek to have them scheduled before the traveling board.

We think that may lend to the difference in the allowance rate.

Chairman CRANSTON. Do you believe that the use of travel boards should be expanded, and should this be done even if BVA has to realign existing resources to do it?

Mr. EGAN. I would respond to that by saying that we have no problem with increasing or expanding the use of traveling boards, but we think that in doing so, the Congress must simultaneously increase their resources.

This morning we heard a reaction of frustration that may occur if the Board of Veterans' Appeals is asked within existing resources to expand availability of traveling boards. And I think that this is the same situation that exists within the VA regional offices.

Chairman Cranston. Any dissenting view?

[No response.]

Chairman Cranston. You don't favor realignment of existing resources? You just want more resources, right?

Mr. Egan. Right.

Mr. Magill. Yes, sir.

Mr. Egan. The prospect of a veteran not being permitted to have a hearing before a traveling board is a particularly egregious kind of thing. As you said this morning, there is something wrong with that.

Chairman Cranston. Yes. In his testimony this morning, the Chairman of the BVA stated that, although the allowance rate is significantly higher in hearings before the travel board than in other BVA forms, there is no method for notifying claimants of the option of a having a hearing before the travel board.

For instance, on form 1-9, there is a box for a field rating board hearing and for a Washington, DC, hearing, but none for the claimant to request a travel board hearing because it is not feasible to have travel board hearings for all of the claimants who would want them if all were notified, according to the testimony.

Would you comment on the fairness of this nondisclosure policy to individual claimants? Anyone?

Mr. Egan. It is not fair.

Mr. Edmiston. I would just reflect back on my previous comment, and that is that we would have no problem with putting a box on there and providing that opportunity to any claimant so long as resources were provided so that BVA could carry that out effectively for the veterans who want it.

Chairman Cranston. Any other comments?

Mr. Riggin. Mr. Chairman, we would certainly agree with that. Simply having a box on form 1-9 for the purposes of letting a veteran know that the traveling board is an option is something we certainly think is appropriate.

Chairman Cranston. Would you comment on the BVA Chairman's assertion this morning that service officers screen cases and select those most likely to succeed as the ones for which they request a travel board hearing?

Mr. Wilkerson. The American Legion's experience is precisely that, Mr. Chairman. It is that plus a combination of other factors where it is a convenience to the veteran to make the trip to the regional office versus coming all the way into Washington where there is, in the opinion of the service officer and certainly with the agreement of the claimant, that this would be his best opportunity to present his case directly to the Board of Veterans' Appeals.

Chairman Cranston. Any other comments?

Mr. Edmiston. That is our experience. Yes, sir.

Chairman Cranston. Would you comment on the BVA Chairman's assertion that in effect the veterans' organizations are assigned a quota of cases they can get travel section hearings for so that the veteran's right to a travel board hearing is actually delegated to and determined by the service organizations?

Mr. WILKERSON. I don't believe there is a quota in fact; it is merely a function of time that is allocated to that particular station by board. If they are there for 2 days, they can accommodate *x* number of hearings. If they were there for a week, more hearings could be scheduled.

Chairman CRANSTON. Paul.

Mr. EGAN. Mr. Chairman, if there is a quota, we would like to know how large the quota is. We would like to know which organizations are assigned the quota, which organizations are not assigned a quota, and what portion of the hearings are allocated for the veteran who is not necessarily represented by one of the organizations.

Mr. EDMISTON. It is our understanding, Mr. Chairman, that when a traveling board goes to the field and is scheduled in a particular location, they schedule so many hearings—that they can only hold so many hearings in that location. So, whenever a veteran or representative of a veteran makes a request they can fill openings, I am not aware of any specific allocation to any organization.

Chairman CRANSTON. I suggest that each of you check with your field representatives and find out what their impressions are about their being a quota or some such thing.

Mr. EDMISTON. That is our impression. I can tell you now, sir.

Chairman CRANSTON. Let us know the results of that "look-see."

[Subsequently, the PVA furnished information which appears on p. 222.]

Chairman CRANSTON. Mr. Magill, in response to my prehearing question 2(c), asking whether or not the BVA should retain jurisdiction of cases remanded to the regional office for further development by directing the RO to obtain any requested evidence and forward it to the BVA for consideration and decision, your organization opposed such a measure, apparently on the basis that loose papers would result and loose papers are easily lost.

I am not clear as to why a new folder could not be used for the safekeeping of any papers generated by the remand. In any event, assuming the loose paper issue could be taken care of satisfactorily, I have a further question that I am going to ask each of you now.

Would not a claimant benefit in terms of efficiency and less delay if the BVA, rather than the RO, decides a claim, after a remand for a medical examination or further evidence is completed, and the exam results or evidence are returned directly to the BVA? Wouldn't the claimant benefit if that was the way it was done?

Mr. EDMISTON. Mr. Chairman, in the view of the DAV, we don't think so. Quite frankly, every opportunity that we would have to get another bite of the apple, so to speak, we would like to have that. We think that is to the claimant's advantage, and we think the statistics on remand support that. Around 20 percent of those remanded are allowed by the local regional offices.

So, we think it is to the advantage of the claimant.

Chairman CRANSTON. Any other comments?

Mr. WILKERSON. The Legion would certainly agree with that. It gives the veteran as well as the service organization another opportunity to review subsequent action by the regional office, offer additional comment, request for further development prior to the time that it comes back to the Board of Veterans' Appeals. I believe we would have strong objections if the case immediately returned and bypassed the regional office to the Board since their decision is, in fact, a final judgment on the issue and the claim.

Chairman **Cranston**. Fred.

Mr. **Juarbe**. Mr. Chairman, I would agree with that, and also our concern is that the decisions be made as expeditiously as possible; and we feel that, considering the high allowance rate after remand of 20 to 25 percent in the field, that argues in favor of the entire case being under the control of the regional offices.

Also, in some cases where there are followup examinations required, the availability of the C file for the examining physician is required. So, in that case, it would be necessary that the entire file be sent back.

Chairman **Cranston**. Any other comments on that point?

Mr. **Bollinger**. Just one thing, Senator. It also occurs to me that, if these records were sent directly back to the Board of Veterans' Appeals, in many cases there could be new and material evidence that the regional office would not be able to consider. It would then become the Board of Veterans' Appeals' obligation to consider evidence that the regional office should have considered.

Chairman **Cranston**. Fine. I guess we have reached the end of a long session.

I would like to ask that all responses for the record be returned by Friday, June 17; and we now stand adjourned. Thank you all very much.

[Whereupon, at 11:58 a.m., the hearing was adjourned.]

APPENDIX

II

100TH CONGRESS
1ST SESSION

S. 1805

To protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: "Agent Orange" Product Liability Litigation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 21 (legislative day, OCTOBER 16), 1987

Mr. MITCHELL introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: "Agent Orange" Product Liability Litigation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any other provision of law, the Administrator of Veterans' Affairs may not take into consideration any payment referred to in subsection (b) for the purpose of determining—

(1) the eligibility of the person receiving such payment to receive a pension under chapter 15 of title 38, United States Code;

(2) the amount of any such pension to be paid to such person; or

(3) the amount of such person's attributable income under section 622 of such title.

(b) The payment referred to in subsection (a) is any payment to any person pursuant to the settlement approved on January 7, 1985, by the United States District Court, Eastern District of New York, in the case of In re: "Agent Orange" Product Liability Litigation, case number MDL No. 381.

II

100th CONGRESS
2d Session

S. 2011

To increase the rates of Veterans' Administration compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans.

IN THE SENATE OF THE UNITED STATES

January 26, 1988

Mr. Cranston (for himself, Mr. Murkowski, Mr. Matsunaga, Mr. DeConcini, Mr. Rockefeller, Mr. Simpson, Mr. Thurmond, Mr. Specter, Mr. Melcher, Mr. Burdick, and Mr. Hecht) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To increase the rates of Veterans' Administration compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1988".

SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall, as provided in paragraph (2), increase, effective December 1, 1988, the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title I of the Veterans' Compensation Cost-of-Living Adjustment Act of 1987 (Public Law 100–277), the Administrator shall further increase such rates and limitations, as in effect on November 30, 1988, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1988, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1989, the Administrator shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

100TH CONGRESS
2D SESSION

S. 2105

To amend title 38, United States Code, to extend for four fiscal years the authority of the Veterans' Administration to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other certain community-based facilities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 29 (legislative day, FEBRUARY 15), 1988

Mr. BYRD (for Mr. CRANSTON) (for himself and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to extend for four fiscal years the authority of the Veterans' Administration to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other certain community-based facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 620A(e) of title 38, United States Code, is amended by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1992".

II

100TH CONGRESS
2D SESSION

S. 2267

To amend title 38, United States Code, to index rates of veterans' disability compensation and surviving spouses' and children's dependency and indemnity compensation to automatically increase to keep pace with the cost of living, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 1988

Mr. CRANSTON (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to index rates of veterans' disability compensation and surviving spouses' and children's dependency and indemnity compensation to automatically increase to keep pace with the cost of living, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES

SECTION 1. (a) This Act may be cited as the "Veterans' Compensation and Benefits Improvement Act of 1988".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an

★(Star Print)

amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

SEC. 101. Section 3112 is amended by redesignating subsection (c) as subsection (d) and inserting the following new subsection:

"(c)(1) Effective December 1 of each year, each rate of disability compensation under sections 314 and 315, dependency and indemnity compensation under sections 411, 413, and 414, and the clothing allowance under section 362 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the immediately preceding year, adjusted to the nearest one-tenth of 1 percent.

"(2) For the purpose of this section—

"(A) 'price index' means the Consumer Price Index published monthly by the Bureau of Labor Statistics;

"(B) the term 'base quarter,' as used with respect to a year, means the calendar quarter ending on September 30 of such year; and

"(C) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.".

SEC. 102. The redesignated subsection (d) of section 3112 is amended by redesignating paragraph (2) as paragraph (3) and inserting the following new paragraph:

"(2) Whenever disability compensation, dependency and indemnity compensation, and clothing allowance rates are increased under subsection (c) of this section, the Administrator shall publish such new rates in the Federal Register as soon as practicable.".

SEC. 103. The Administrator may, consistent with the increases authorized by this title, administratively adjust the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable under chapter 11 of title 38, United States Code. Notice of any adjustments made under this section will be published in accordance with section 102, above.

TITLE II—ENLARGEMENT OF CLOTHING-ALLOWANCE COVERAGE AND INCOME EXCLUSION AMENDMENTS

ENLARGEMENT OF CLOTHING-ALLOWANCE COVERAGE

SEC. 201. Section 362 is amended to read as follows:

"SEC. 362. The Administrator, under regulations which the Administrator shall prescribe, shall pay a clothing allowance of $380 per year to each veteran who because of disability which is compensable under this chapter—

"(A) wears or uses prosthetic or orthopedic appliance or appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such veteran, or

"(B) uses prescribed medication for a service-connected skin condition which medication the Administrator determines stains or otherwise damages such veteran's clothing.".

INCOME EXCLUSION, CASUALTY LOSS REIMBURSEMENT

SEC. 202. Sections 415(f)(1)(I) and 503(a)(5) are each amended to read as follows:

"reimbursement of any kind for any casualty loss, as defined by the Administrator, provided that in no event shall the amount to be excluded exceed the fair market value of the property involved immediately preceding the loss;".

TITLE III—MISCELLANEOUS AMENDMENTS

REINSTATED ENTITLEMENT PROGRAM FOR SURVIVORS (REPS)

SEC. 301. (a) Section 156(a)(1)(B) of Public Law 97–377 (96 Stat. 1830, 1920 (1982)) is amended by inserting after the word "month" the following clause: "or who meets the requirements for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code".

(b) Section 156(a)(1)(C) of Public Law 97-377 (96 Stat. 1830, 1920 (1982)) is amended by inserting after "(42 U.S.C. 410(g))" a comma and the following clause: "or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code,".

INDEBTEDNESS OFFSETS BY OTHER FEDERAL AGENCIES

SEC. 302. Section 3114 is amended—

(1) by redesignating subsection (d) as subsection (e) and inserting the following new subsection:

"(d)(1)(A) In the event a person becomes indebted to the Veterans' Administration by reason of an overpayment of benefits under chapter 11 or chapter 15 of this title, the Administrator, after complying with the procedures provided in subsection (b) of this section, may request that the Secretary of the uniformed service concerned collect any portion of the indebtedness not waived under section 3102 of this title from retired or retainer pay due such person by such uniformed service.

"(B) Such Secretary, upon receiving a request under subparagraph (A) of this paragraph, shall determine whether any retired or retainer pay is payable by such uniformed service to the person named in the request and, if so, shall deduct the amount of any portion of the indebtedness not waived under section 3102 of this title from future payments of retired or retainer pay made to such person by such uniformed service.

"(2)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections.

"(B) For purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

"(i) the term 'records of the agency' shall be considered to refer to the records of the Veterans' Administration; and

"(ii) the term 'agency' in clauses (3) and (4) shall be considered to refer to the Veterans' Administration.

"(3) Funds collected pursuant to a request made under this subsection shall be credited to the Veterans' Administration appropriation account from which the overpayment was made.".

ADMINISTRATIVE DEBT COLLECTION BY OFFSET FROM VETERANS' BENEFITS

SEC. 303. Section 3101(c)(1) is amended by—

(1) inserting ": (A)" following "the amount of";

(2) striking out the period at the end thereof and inserting in lieu of the period a semicolon; and

(3) inserting at the end thereof the following: "and (B) any overpayments of retired or retainer pay (for service in a uniformed service named in section 101(3) of title 37) made to the veteran.".

DISCLOSURE OF SOCIAL SECURITY NUMBERS

SEC. 304. Section 3001 is amended by adding the following new subsection:

"(e) Any person who applies for or is in receipt of any compensation or pension benefits under this title is required, as a condition precedent to receipt or continued receipt of such benefits, where a social security number has been assigned, to provide to the Administrator upon request his or her social security number, and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of any such benefits.".

EXTENSION OF AUTHORITY TO MAINTAIN REGIONAL OFFICE IN PHILIPPINES

SEC. 305. Section 230(b) is amended by striking out "1988" and substituting in lieu thereof "1992".

II

100TH CONGRESS
2D SESSION

S. 2268

To amend title 38, United States Code, to modify eligibility requirements for the plot allowance; authorize a headstone allowance for prepurchased grave markers; extend the State cemetery grants program; and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 1988

Mr. CRANSTON (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to modify eligibility requirements for the plot allowance; authorize a headstone allowance for prepurchased grave markers; extend the State cemetery grants program; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Burial Benefits Amendments Act of 1988".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the

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reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. Subsection (b) of section 903 is amended by—

(1) striking out the comma after "such subsection" and inserting in lieu thereof "or";

(2) striking out after "line of duty" the comma and "or who is a veteran of any war"; and

(3) inserting in clause (1) after "if such veteran" a comma and "or a veteran who is a veteran of any war,".

SEC. 3. Subsection (d) of section 906 is amended by inserting after "by or on behalf of such person", a comma and "or, in cases where the veteran has prepaid the cost of the veteran's own headstone or marker, by the veteran,".

SEC. 4. Paragraph (2) of subsection (a) of section 1008 is amended by striking out the paragraph and inserting in lieu thereof "(2) There is authorized to be appropriated $9,000,000 for fiscal year 1989, and such sums as may be necessary for each of the four succeeding fiscal years, for the purpose of making grants under paragraph (1) of this subsection.".

SEC. 5. Subsection (b) of section 1008 is amended—

(1) by striking out clause (1); and

(2) by redesignating clauses (2), (3), and (4) as clauses (1), (2), and (3), respectively.

SEC. 6. The amendments made by section 2 of this Act shall take effect with respect to deaths occurring after September 30, 1989. The amendments made by section 3 of this Act shall take effect with respect to deaths occurring after September 30, 1988. Sections 4 and 5 of this Act shall take effect on the date of enactment of this Act.

II

100TH CONGRESS
2D SESSION

S. 2269

To amend title 38, section 203(b), United States Code, to delete the requirement that settlements of claims in excess of $1,000,000 on a construction contract be provided for specifically in an appropriation law, and to provide instead that the Administrator notify the House and Senate Committees on Appropriations of construction contract claims settlements of more than $1,000,000.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 1988

Mr. CRANSTON (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

---

A BILL

To amend title 38, section 203(b), United States Code, to delete the requirement that settlements of claims in excess of $1,000,000 on a construction contract be provided for specifically in an appropriation law, and to provide instead that the Administrator notify the House and Senate Committees on Appropriations of construction contract claims settlements of more than $1,000,000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(b) of title 38, United States Code, is amended—

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SEC. 2. By striking "and the settlement is provided for specifically in an appropriation law" after "Any funds appropriated to the Veterans Administration may be used for a settlement of more than $1,000,000 on a construction contract only if settlement is audited independently for reasonableness and appropriateness of expenditures" in subsection (b).

SEC. 3. By inserting "The Administrator shall promptly notify the House and Senate Committees on Appropriations, in writing, of such settlements.", after the first sentence of subsection (b).

II

100TH CONGRESS
2D SESSION

S. 2294

To amend title 38, United States Code, and other provisions of law, to extend the authority of the Veterans' Administration (VA) to continue major health-care programs, and to revise and clarify VA authority to furnish certain health-care benefits, and to enhance VA authority to recruit and retain certain health-care personnel.

IN THE SENATE OF THE UNITED STATES

APRIL 18 (legislative day, APRIL 11), 1988

Mr. CRANSTON (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, and other provisions of law, to extend the authority of the Veterans' Administration (VA) to continue major health-care programs, and to revise and clarify VA authority to furnish certain health-care benefits, and to enhance VA authority to recruit and retain certain health-care personnel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Veterans' Administration Health Care Amendments Act of 1988".

(b) Except as otherwise expressly provided, whenever in this act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

Sec. 2. Section 620A is amended by striking subsections (e) and (f) in their entirety, and by redesignating subsection (g) as (e).

Sec. 3. Section 629B(c) is amended by striking "1989" and inserting in lieu thereof "1991".

Sec. 4. Section 628(a) is amended by striking the word "found" and all that follows in clause (D) of paragraph (2), and inserting in lieu thereof "a participant in a vocational rehabilitation program as defined in section 1501(9); and".

Sec. 5. (a) Section 632(a) is amended by striking "1989" and inserting in lieu thereof "1994".

(b) Section 632(b)(1) is amended to read as follows:

"(b)(1) To further assure the effective care and treatment of United States veterans in the Veterans Memorial Medical Center, there is authorized to be appropriated for each fiscal year occurring during the period beginning October 1, 1988, and ending on September 30, 1994, the sum of $500,000 to be used by the Administrator for making grants to the Veterans Memorial Medical Center. The sum of $50,000 of these grants shall be used for the education and training of health service personnel who are assigned to the Veterans Memorial Medical Center, the remainder to be used for the purpose of assisting the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the center.".

SEC. 6. Section 641(a) of title 38, United States Code, is amended by striking "$7.30", "$17.05", and "$15.25" and inserting in lieu thereof "$10.67", "$20.48", and "$20.48", respectively.

SEC. 7. (a) Section 4142(a)(1)(B) is amended by striking the words "medicine, osteopathy, dentistry, podiatry, optometry, or nursing", and inserting in lieu thereof "a field of training or study in direct health-care services".

(b) Section 4143(b) is amended:

(1) By inserting "(i)" before the word "With" in subparagraph (C) in paragraph (3).

(2) By striking the period after the words "leading to such degree" in paragraph (3), subparagraph (C).

(3) By inserting after the word "degree" in the last sentence of paragraph (3), subparagraph (C), the following words: "or, if a license or other credential is required for VA employment, the effective date of such license or credential except that the Administrator may, at the request of such participant, defer such date until the end of the period required for the participant to complete an internship or residency or other advanced clinical training. If the participant requests such a deferral the Administrator shall notify the

participant that such deferral could lead to an additional period of obligated service in accordance with paragraph (4) of this subsection.".

(4) By inserting at the end of paragraph (3), subparagraph (C), the following new clause:

"(ii) No such period of internship or residency or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subchapter.".

(5) By inserting the words "or (3)(C)" in paragraph (4) after "(3)(A)".

(c) Section 4144(b)(4) is amended by inserting the words "or other person who provides direct health-care services" after the word "auxiliary".

(d)(1) The heading of section 4141 is amended to read as follows:

"§ 4141. Establishment of scholarship program; purpose; duration".

(2) The item relating to such section in the table of sections at the beginning of chapter 73 of such title is amended to read as follows:

"4141. Establishment of scholarship program; purpose; duration.".

SEC. 8. (a) Subchapter IV of chapter 73 of title 38, United States Code, is amended by adding at the end thereof the following new section:

"§ 4147. Establishment of tuition reimbursement program.

"(a) Notwithstanding section 4104(4), 4107(c)(2), and 4108 of title 5, United States Code, the Administrator may establish a tuition reimbursement program for nurses appointed under this chapter, and may prescribe regulations for the implementation of such program.

"(b) To be eligible for participation in such a program, an applicant must—

"(1) have accrued one year of current satisfactory service;

"(2) be enrolled or accepted for enrollment in an institution approved by the Administrator in a course of study or training leading to completion of a degree in nursing;

"(3) be free of any obligation under any other Federal program to perform service after completion of a course of study or other training program; and

"(4) meet such criteria as may be set forth in the Administrator's regulations.

"(c) As a condition of reimbursement, a participant must—

"(1) maintain employment as a Veterans' Administration nurse while pursuing an approved course under the reimbursement program;

"(2) successfully complete an approved course under the reimbursement program; and

"(3) agree, in accordance with the Administrator's regulations, to perform a period of obligated service as a Veterans' Administration nurse or in a field related to nursing.

"(d) If a participant fails to either—

"(1) maintain Veterans' Administration employment; or

"(2) successfully complete the approved course under such program;

no reimbursement may be provided and no period of obligated service will be incurred.

"(e) The Veterans' Administration may recover any reimbursements made under this section in the event of a participant's breach of the agreement to perform obligated service.

"(f)(1) The Chief Medical Director may—

"(A) waive the right of the Veterans' Administration to recover under this section, and

"(B) waive any nurse's obligation to provide service, whenever compliance by the participant is impossible due to circumstances beyond the control of the participant or whenever the Chief Medical Director determines that waiver would be in the best interest of the Veterans' Administration.

"(2) Any such waiver must be in accordance with the Administrator's regulations.".

(b) The table of sections at the beginning of subchapter IV of chapter 73 is amended by inserting after the item relating to section 4146 the following new item:

"4147. Establishment of tuition reimbursement program.".

(c) The catchline of subchapter IV is amended to read as follows: "Veterans Administration Health Professional Educational Assistance Program".

SEC. 9. Section 5033(a) is amended by striking "1989" and inserting in lieu thereof "1992".

SEC. 10. Section 201(b) of Public Law 99-576 is amended by deleting "1989" and inserting in lieu thereof "1991".

SEC. 11. EFFECTIVE DATE.—The amendments made by section six shall apply with respect to hospital care, domiciliary care, and nursing home care furnished in State home after September 30, 1988.

100TH CONGRESS
2D SESSION

S. 2306

To amend title 38, United States Code, to authorize multiyear contracts in certain cases.

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 11), 1988

Mr. CRANSTON (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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A BILL

To amend title 38, United States Code, to authorize multiyear contracts in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Veterans Administration Multiyear Contracting Act of 1988".

SEC. 2. Section 213 of title 38, United States Code, is amended (1) by inserting (a) before "The" in the first sentence; and (2) by adding at the end thereof the following new subsection:

"(b)(1) For the purposes of this subsection—

"(A) the term 'multiyear contract' means a contract for supplies or services with a no longer than five-year effective period. It does not include a contract for construction or a lease of real property;

"(B) the term 'appropriations' is used as defined in section 1511 of title 31, United States Code.

"(2) Subject to paragraph (5), the Administrator may enter into a multiyear contract for the acquisition of supplies or services when—

"(A) appropriations are available and adequate for fixed obligations that are required for—

"(i) total payments that would arise under the full term of the contract; or

"(ii) payments for the first fiscal year during which the contract is in effect, plus the full amount of estimated cancellation costs, if any; and

"(B) the Administrator determines that—

"(i) such a contract will serve the best interests of the Veterans Administration by—

"(I) reducing costs under the contract; or

"(II) achieving economies in administration, performance, and operation;

"(ii) during the proposed contract period—

"(I) there will be a continuing or recurring need for the supplies or services; and

"(II) the need for the supplies or services to be acquired is expected to remain substantially unchanged in terms of rate of performance, rate of acquisition, and total quantity and extent of supplies or services; and

"(iii) the specifications for the supplies or services are expected to be reasonably stable, and the technical risks associated with the acquisition are not excessive; and

"(iv) such a contract will not inhibit small business concerns from submitting a bid or proposal for such contract.

"(3) A multiyear contract authorized by this subsection shall include—

"(A) A provision that the Veterans Administration's obligation under the contract during the second or any subsequent fiscal year included in the contract period is contingent on the appropriation of funds for such year, if it is determined that appropriations are not available to cover total payments under the full term of the contract; and

"(B) Notwithstanding section 1502(a) of title 31, United States Code, a provision for the payment of a reasonable cancellation charge to compensate the contractor for nonrecurring, unrecovered costs, if any, if the performance is canceled pursuant to a provision described in subparagraph (A).

"(4)(A) If the Administrator determines that the amount of funds appropriated is not sufficient to cover programs of the Veterans Administration and for all multiyear contracts issued by the Veterans Administration during the second or subsequent fiscal years included in the contract period, the performance under the contract may be canceled.

"(B) Any cost of the cancellation of performance under the contract shall be paid from appropriated funds which were originally available either for performance of the contract or for the payment of cancellation costs. If funds are not available from the original account, current year funds available for contracting may be used.

"(C) Amounts appropriated to finance cancellation costs may remain available until expended for outyear cancellation or contract costs, as appropriate.

"(5)(A) Nothing in this subsection is intended to modify or affect any other provision of law which authorizes multiyear contracting.

"(B) This subsection does not authorize the Administrator to acquire property or services by means of a multiyear contract unless he is otherwise authorized to acquire such supplies or services.

"(C) Nothing in this subsection is intended to modify or affect the Veterans Administration's rights to terminate for convenience a multiyear contract.

"(D) The Administrator will promulgate regulations implementing this subsection.".

SEC. 3. The amendments made by section 2 of this Act shall take effect with respect to contracts entered into after September 30, 1988.

OPENING STATEMENT
SENATOR ALAN CRANSTON, CHAIRMAN
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE LEGISLATIVE HEARING
ON S. 2011 -- "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1988" -- S. 2105, 1805, 2267, 2268, 2269, SECTION 2 of S. 2294, AND 2306 AND OVERSIGHT HEARING ON THE OPERATIONS OF THE BOARD OF VETERANS' APPEALS
JUNE 9, 1988

Good morning and welcome to each of you. Today's hearing concerns S. 2011, the proposed "Veterans' Compensation Cost-of-Living Adjustment Act of 1988"; S. 2105, a bill to extend the VA's drug and alcohol community-based contract-care authority; S. 1805, a bill to exempt from countable income for VA pension and health-care purposes payments made in settlement of the Agent Orange case; and various Administration proposals relating to compensation and other VA programs -- sections 201, 202, 304, and 305 of S. 2267; sections 3 and 4 of S. 2268; S. 2269; and S. 2306. Additionally, we will be hearing testimony regarding the operations of the Board of Veterans' Appeals.

S. 2011

On January 26, 1988, I, together with the Committee's ranking minority member, Senator Murkowski, Committee members Matsunaga, DeConcini, Rockefeller, Simpson, Thurmond, and Specter, and Senators Melcher, Burdick, and Hecht, introduced S. 2011, a bill to provide for a cost-of-living adjustment (COLA) in the rates of compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to the survivors of those who die from service-connected causes. This COLA, which would take effect on December 1, 1988, would be the same percentage as the COLA which will automatically be provided for Social Security and VA pension benefits effective on that date. The Congressional Budget Office (CBO) projects that the Social Security/VA pension increase for fiscal year 1989 will be 4.5 percent.

The VA's service-connected compensation program lies at the heart of our system of veterans' benefits. The Committee on Veterans' Affairs has consistently attached the highest priority to the needs of veterans with service-connected disabilities and the survivors of those who have made the final sacrifice. My number one priority in veterans' affairs is meeting the needs of the more than 2.2 million veterans who suffer from disabilities resulting from their service and the more than 310,000 survivors of those who died from service-connected causes. Through the COLA, we can ensure that the value of these VA benefits is not eroded by inflation.

As of April 1988, the disability compensation program was providing benefits to 2,203,586 veterans who have service-connected disabilities. This number includes disabled veterans with service during the following periods of conflict: 6,757 World War I veterans, 961,428 World War II veterans, 215,919 Korean-conflict veterans, and 628,764 Vietnam-era veterans. Also, as of April 1988, 346,722 survivors were receiving DIC.

S. 2105

On February 29, 1988, I introduced, with Senator Murkowski, S. 2105 to extend for four years the VA's authority to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other community-based facilities. The VA estimates that it could provide extended treatment for about 7,500 veterans a year at an annual cost of $10.1 million in FY 1989 and each year thereafter through this program. Residential treatment programs offer veterans extended positive reinforcement, counseling, and rehabilitation assistance to help them reintegrate into society and to find employment and housing following detoxification.

On April 20, 1988, the VA transmitted to this Committee, pursuant to section 101 of Public law 99-166, the report on the VA's Contract Program for Veterans with Alcohol and Drug Dependence Disorders. This report found that the contract program has been very successful in helping those who have serious substance abuse problems to stay off drugs and alcohol. More than 75 percent of those veterans who had completed the residential treatment program were found to be abstaining from any substance abuse, whereas only 58 percent of veterans who had dropped out of the program remained sober. In addition, employment rates for the treatment group increased from 16.1 percent at the time of admission to 46.8 percent at the time of followup.

The contract program was established under legislation I authored which was enacted in 1979 and has been functioning for nearly 10 years. Although our bill, S. 2105 -- which was introduced before the report was submitted -- would reauthorize the program for four years, I now favor, based on the results of the study and the testimony this morning, making the program permanent, as the Administration has proposed.

S. 1805

I also am looking forward to the witnesses' testimony on S. 1805, which Senator Mitchell introduced on October 21, 1987, to provide that payments made pursuant to the settlement approved by the United States District Court in the Agent Orange products-liability litigation be excluded from computation of income for purposes of VA pension and eligibility for VA hospital care.

The Board of Veterans' Appeals

The Board of Veterans' Appeals (BVA) has the final word on appeals by veterans and other claimants on individual benefit determinations. Unless and until judicial review becomes law, the BVA is the "court of last resort" for claimants seeking VA benefits. There are a number of characteristics that set the BVA apart from other adjudicatory bodies such as the United States District Courts or the Courts of Appeals. The first of these is the sheer volume of casework and the correspondingly high number of people making BVA determinations. In an average year, the 65 Board members, assisted by a staff of 430, decide over 40,000 cases a year as compared to one of the busiest United States Courts of Appeals, that for the Ninth Circuit, which decides approximately 5,000 cases per year with 28 judges, assisted by a staff of 300.

A second factor which sets the BVA apart is the absence of attorney representation. Although advocacy on behalf of the claimant is encouraged, veterans' service organizations supply the majority of advocates while, through the years, attorneys have been discouraged from getting involved in the process by a $10 limitation, in section 3404 (c)(2) of title 38, on attorneys' fees.

A third major difference between the BVA and other similar bodies is the informal nature of the proceedings at the BVA. For instance, by regulation (38 C.F.R 19.158), the rules of evidence do not apply -- only "reasonable bounds of relevancy and materiality". Where the weight of the evidence is in approximately even balance, the rule (38 C.F.R. 3.102) requires that the claimant be given the benefit of doubt. Questioning, but not cross-examination, of a claimant or other witnesses is permitted. Also, although a claimant may arrange for the voluntary appearance of any witness, the BVA will not require the presence of any VA employees or other persons (38 C.F.R. 19.165(a)).

Although a number of the specific features which make the BVA unique are hailed as beneficial to veterans and other claimants, it is those very features which directly, and sometimes indirectly, raise issues of fundamental fairness and due process. In an effort to sort out which practices are necessary and which, if any, could have a generally negative impact on veterans and other claimants for whom the BVA is the last resort, I have invited testimony from the BVA, the VA, the major veterans' services organizations, and others on BVA practices.

As I noted a moment ago, the BVA is faced with deciding approximately 40,000 cases a year. As a management technique to encourage and reward its members for meeting the demand for decisions in a timely manner, the BVA uses production quotas for both its staff attorneys and for its board members. Each panel's goal is 40 cases per week. If a panel meets its yearly goal, the members are eligible, every other year, for cash bonuses which, according to testimony from the BVA Chairman before the House Committee on Veterans Affairs on October 6, 1987, range between $500 and $5,000. According to BVA officials, the bonuses are awarded by a committee consisting of the Chairman, the Vice-Chairman, the two deputy Vice-Chairmen, and three executive assistants, and are based, first, on exceeding the production quota and, second, on the quality of the decisions, in terms of writing and format but purportedly not in terms of the judgment exercised by the panel member.

I am concerned about the compatibility of this process for bonuses with the President's decisions to exempt Board members from the Federal employees' Performance Appraisal System and Merit Pay System based on the following Presidential finding:

> "It is essential that the Board members be free of institutional bias and pressures that could be viewed as influencing their decisions. By including the Board members under merit pay [or in the Performance Management and Recognition System], it could appear that their decisions are controlled by the prospect of receiving lesser or greater salary increases as a result of rendering determinations that are unfavorable or favorable to the Government. Such a perception could destroy the public's confidence in the integrity of the Board's decisions"

In the case of the current bonus system, it would appear that the Chairman of the BVA, in an attempt to motivate Board members to be more productive, has allowed for the appearance -- at least -- that the independence of the Board members has been compromised. If any Federal Court attempted to establish a numerical quota system for compensating its judges, the outcry from potential litigants and many others would be deafening. Indeed, our founding fathers spoke to this issue indirectly in providing in Article III, section 1, of the U.S. Constitution that "[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." The reason for this proscription -- to avoid any possibilities of tainting the independence of the Judiciary -- would seem applicable to the BVA bonus system as well.

Another issue is a lack of consistency in BVA decision-making. Although the BVA has an index of decisions, and Board members and staff attorneys are purportedly encouraged to make their current decisions consistent with previous decisions, there is no requirement that a panel decide current cases in accordance with prior decisions. Accordingly, different results can be reached in cases with substantially similar facts. In this regard, it has been suggested that some panels are more denial- or allowance-oriented than others and that the outcome of a claimaint's case often depends on the assignment to a particular panel rather than the merits of the case.

Obviously, such a situation is not acceptable if it can be avoided. The system should be designed to ensure, as nearly as humanly possible, that one claimant receives the same measure of justice as another claimant when the facts are indistinguishable regardless of what Board panel is assigned his or her case.

Yet another concern I have is the increase in remand rates. Over the last three fiscal years, there has been an increase in the number of cases remanded by the BVA to a Regional Office. From FY 1984 to FY 1987, the number of remands increased from 14.9% to 20.7%. It is unclear at this point why the proportion of remands increased so dramatically, but it is clear that such an increase is significantly adding to the time it takes a claimant to get a final decision, and, accordingly, decreasing the measure of fairness to the claimant. It is also clear that a remand counts as a case disposition for purposes of computing bonuses for Board members and it would seem that generally the opinion in a remand case would take less time to prepare.

The use at the BVA of both physicians and attorneys as Board members is an important feature of the BVA and is intended to strengthen the Board's ability to decide fairly cases involving both medical and legal issues. In day-to-day operations, the BVA panel members and staff attorneys routinely informally consult with physician Board members to ascertain both general medical information and specific medical opinions regarding a particular case; and they do this generally without reflecting in the record or the decision that such a physician's opinion was considered in reaching the outcome. On occasion, when the physician's opinion forms a major basis for the decision, the physician will sign the decision in place of one of the panel members. Additionally, although cases are assigned to panels by subject matter and there has been some attempt to assign subject areas to panels upon which a physician trained in that certain specialty sits, there is no requirement that a physician with a particular expertise be assigned to cases involving that particular expertise. The lack of such a requirement may, in part, encourage the informal consultation process described above.

These practices surrounding the use of physicians raise a number of issues. For example:

* Is it fair to the claimant for the Board members and staff attorneys to be consulting physicians and relying on those physicians' opinions in reaching a decision on the case and not reflect that reliance in the record of the decision?

* Especially when the physician on a BVA panel is not an expert in the particular field at issue in the case, is it fair to let that physician substitute his or her judgment for the physician or physicians who examined the claimant?

* Even if the physician is an expert in the particular field, what relative weight, if any, should the Board physician's opinion be given when compared to the opinion of the examining physician?

* What training is given to the physician Board members to ensure that their medical knowledge is current, especially in fast-developing and complex areas such as post-traumatic stress disorder, radiation, and Agent Orange cases?

* What are the qualifications of the physician members?

Yet another issue revolves around the definition of what constitutes a final decision of the BVA. Currently, to be considered a "final decision", a decision of a panel must be unanimous. Under section 4003 of title 38, the Chairman can either vote with the majority, thereby deciding the case, or expand the panel by adding three members. The decision on who is appointed to serve on the expanded panel is solely in the discretion of the Chairman. Concerns about this method of decisionmaking include the following questions:

- By expanding the panel instead of voting with the majority, doesn't the Chairman disclose a preference for the minority's vote, thereby possibly tainting the independence of the expanded panel?

- Shouldn't the doctrine of reasonable doubt operate to allow a claim when the majority of a panel votes to allow it?

- Doesn't the discretion to appoint the expanded panel create a situation ripe for potential, if not actual, abuse by the Chairman in that the Chairman can "stack" the expanded panel with members having a known propensity for granting allowances or denials depending on the Chairman's view of the case?

- In sum, does the Chairman have too much unchecked power?

Another area of concern is that it has been suggested that it is very difficult to prove a case of total unemployability at the BVA. The reasons for this are said to be at least twofold: (1) the BVA requires very specific wording of the veteran's claim for total unemployability and when such wording is absent the case is either denied or remanded, and (2) the BVA applies a very strict standard for deciding whether an individual is employable. These assertions stand in contrast to the reasonable doubt standard as well as the supposedly informal nature of the entire process and the VA's responsibility to assist in developing claims.

The Vietnam Veterans of America (VVA) has asserted in testimony before this Committee on April 28, 1988, -- and before the House Committee on Veterans' Affairs earlier, and as part of a lawsuit filed last month -- that the BVA is engaged in a number of improper practices. VVA claimed that these practices include the use of "courtesy signatures", whereby only one member of a panel reviews and decides a case and then requests the other two members to sign the decision without any review of the decision or the underlying record, and the use of a "Chairman's Signature List" containing the names of certain Senators and Representatives, which, it is suggested, is used to give preferential treatment to certain claimants when a Senator or Representative on the list expresses an interest in their cases. It has also been alleged by the VVA and other veterans' groups that some Chief Board members abuse their powers to assign cases to staff attorneys by assigning the easiest cases to senior attorneys to increase those attorneys' production numbers, thereby leaving more difficult cases to more junior attorneys. According to another VVA allegation, the BVA practices "top sheeting", wherein only the face sheet of the case, which is written by a staff attorney and gives a brief summary of the case, is reviewed by the Board members before a decision is made on the case. Such practices, if they occur, threaten to destroy the reality and appearance of the impartiality of Board members and their due consideration of the cases they decide.

I believe that the concerns and issues I have outlined illustrate that the BVA's operations are much in need of Congressional oversight. At this hearing, not only do we have an opportunity to review the past operations of the B.V.A., but we also have the chance to explore ways to improve the quality and timeliness of the decisions in order to ensure that veterans and other claimants receive fair and equitable consideration of their claims. To help bring about a full review of these issues, I have asked the veterans service organizations and the B.V.A. to address a number of pre-hearing questions. At this time, I would like to thank everyone involved in the preparation and timely submission of those answers. They will be printed in the record at the conclusion of my remarks.

One final point about the relationship between the BVA and judicial review. I have long said that the need for some avenue of judicial review of VA adjudications does not depend on whether or not the present system of claims adjudication, including the BVA, is broken. I continue to believe that is true. I also continue to believe that the advent of judicial review, as proposed in S. 11, would serve to improve the adjudication process by subjecting BVA decisions to review, and thereby encouraging the Board to do a better, more thorough job in reaching and articulating it decisions. However, although I do believe there is some interrelationship, in the same way, I believe that efforts to ensure fundamental fairness at the BVA can and should move forward regardless of the outcome of judicial review legislation.

STATEMENT OF DONALD L. IVERS
GENERAL COUNSEL
VETERANS ADMINISTRATION
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
JUNE 9, 1988

Mr. Chairman and Members of the Committee:

It is my pleasure to present the views of the Veterans Administration on a number of bills pending before you, affecting all three of VA's program elements, the Department of Veterans Benefits, the Department of Memorial Affairs, and the Department of Medicine and Surgery.

COMPENSATION, PENSION, AND BURIAL MATTERS

Four bills on today's agenda fall within this subject area. I will first address the measures that represent VA initiatives, S. 2267 and S. 2268, and then comment upon S. 2011 and S. 1805. My remarks will focus upon the more salient features of the bills under discussion.

Our principal initiative, which was introduced as S. 2267 on April 11 by you, Mr. Chairman, at our request, would provide automatic increases in the rates of service-connected disability compensation for veterans and dependency and indemnity compensation (DIC) payable to their surviving spouses and children. In addition, the bill would:

- liberalize eligibility for the clothing allowance;
- expand the "fire insurance" income exclusion to include comparable payments received from other sources;
- authorize the uniformed services to deduct by offset from military retired or retainer pay a veteran's indebtedness to the VA;
- authorize the VA to offset from disability compensation or pension to collect overpayments of military retired or retainer pay;
- authorize the VA to require the disclosure of claimants' and dependents' Social Security numbers in all claims for disability and death benefits; and
- provide a four-year extension in VA's authority to operate our regional office in the Philippines.

3.

Disability compensation benefits are payable under chapter 11 of title 38 to furnish veterans disabled during, or as a consequence of, military service, with financial relief for their reduction in earning capacity. The amount of benefits varies with the degrees of disability demonstrated, and additional compensation is payable for dependents if the veteran's disability is rated 30 percent or more disabling.

DIC benefits are payable under chapter 13 of title 38 to the surviving spouses and children of veterans whose deaths were service-connected. Payments at DIC rates may also be made if a veteran's death was not service-connected but the veteran was rated totally disabled for a specified period prior to death. Surviving spouses' DIC rates are based on the veterans' military pay grades. A surviving spouse may receive additional payments for the veteran's children under the age of 18, or when the surviving spouse is disabled. Children over the age of 18 who became helpless before reaching that age may receive DIC, as may those ages 18 to 23 attending approved educational institutions. If there is no surviving spouse, a child under the age of 18 may also receive DIC.

The administration of the disability compensation and DIC programs is one of the VA's most significant responsibilities. We recognize the obligation to propose periodic adjustments in monthly rates as economic circumstances change. In recent years, compensation adjustments have generally been keyed to indexed cost-of-living allowances (COLA's) in Social Security and VA pension, although these adjustments have not been automatic. Rather, they have been effected by enactment of separate public laws designed for that purpose, the most recent being Public Law 100-227, approved by the President on December 31, 1987. Since 1973, legislation has been enacted in every year (except 1983) granting increases in these benefits to compensate for cost-of-living increases. This Administration has consistently supported these adjustments.

The Administration strongly supports COLA's based upon actual cost-of-living increases, and we believe that goal would best be effectuated by legislation providing for an automatic annual increase in compensation rates indexed to increases in the CPI. Tying compensation and DIC rates to the CPI would assure veterans and their survivors that they would receive full increases, in pace with inflation, in a timely manner, avoiding delays such as that experienced with Public Law 100-227. As you know, that legislation was enacted one month after its effective date, resulting in beneficiaries not receiving their benefit increases in line with congressional intent. Our bill would also save Congress the difficulty of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance.

We estimate that enactment of the automatic increases in compensation and DIC rates in S. 2267 would result in the following costs over the next 5 years:

Fiscal Year	Cost ($ millions)
1989	360.9
1990	786.2
1991	1,188.7
1992	1,542.8
1993	1,850.0
	5,728.6

Current law, 38 U.S.C. § 362, provides that a clothing allowance may be paid to a veteran who, because of service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Administrator determines tends to wear out or tear the veteran's clothing.

Section 201 of S. 2267 would amend section 362 to authorize the Administrator to provide a clothing allowance in those cases in which the prescribed use of medication permanently stains or otherwise damages the veteran's clothing.

Veterans with skin disorders have reported that the medications used in treatment of their conditions irreparably stain their clothing. The VA has learned that the medication used to treat some unusual skin conditions may in fact cause stains which cannot be removed. Accordingly, it is proposed that the VA be authorized to make a determination, on a case-by-case basis, whether medication for a service-connected skin condition causes such damage to clothing as to require payment of a clothing allowance.

Benefit and administrative costs for this proposal would be insignificant, taking into account the amount of the authorized clothing allowance payment and the extremely small number of veterans who would be entitled.

Section 202 of S. 2267 would exclude from income computations for parents' DIC and pension purposes the proceeds received to replace or restore the value of real or personal property damaged, destroyed, or lost due to any cause. In this way, it would promote equity by extending the present "fire insurance" exclusion to other casualty losses.

Costs cannot be estimated since no data are available to show the number of cases that would be affected or the dollar amounts of the proposed excluded payments.

S. 2267 would also facilitate the proper administration of Government benefit funds. This worthy goal would be accomplished by providing reciprocal authority, in sections 302 and 303, to the Department of Defense and the VA to collect, by offset against such benefits paid by the other agency, overpayments of military retired and retainer pay and veterans' disability compensation and pension. In addition, the mandatory disclosure of claimants' and dependents' Social Security numbers proposed in section 304 would assist the Agency in its duty to curtail fraud and prevent unwarranted dual payments of benefits.

Finally, section 305 of S. 2267 would extend to September 30, 1992, the Veterans Administration's authority to operate a Regional Office in the Philippines. Our present authority expires September 30, 1988.

In our experience, a Regional Office in the Philippines is the most efficacious means of administering VA benefits for Filipino beneficiaries. We strongly urge this extension, which would enable us to continue meeting the needs of our Filipino beneficiaries in a cost-effective manner. The extension would entail the following approximate administrative costs:

Fiscal Year	Cost ($ thousands)
1989	1,660
1990	1,688
1991	1,716
1992	1,744
	6,808

Mr. Chairman, our next proposal, S. 2268, would amend provisions affecting certain VA burial benefits and extend the State cemetery grants program. Specifically, the bill would limit eligibility for the plot allowance, authorize a headstone allowance for prepurchased grave markers, and extend for five years the Administrator's authority to conduct the State cemetery grants program. These grants, of course, are administered by the Department of Memorial Affairs.

With respect to the plot allowance, our proposal would focus VA benefit payments on veterans in genuine financial need. By limiting eligibility for the allowance to service-disabled veterans, pensioners, and certain institutionalized veterans, the bill would better realize the original intent of the plot allowance program and reconcile the differences in eligibility criteria between the burial allowance and the plot allowance. In the case of payments to States, however, broader criteria would be retained to permit reimbursement to States and localities for burials in State cemeteries and those operated by lesser political subdivisions.

The second section of S. 2268 recognizes the increasing popularity of prepaid funeral arrangements, including the prepurchase of memorials. By authorizing the payment of the headstone or grave marker allowance to the estate of a deceased veteran who purchased the memorial prior to death, the bill would remove the disincentive to prepurchase memorials under current law and relieve survivors of a financial burden.

Section 3 of S. 2268 would extend for five years the authority for appropriation of Federal funds for the purpose of making matching grants under the State cemetery grants program, thereby extending the life of this important program which has enabled the States and Federal Government to share the obligation of meeting the burial needs of this Nation's veterans.

I will turn now to discussion of a bill introduced last January by you, Mr. Chairman, on behalf of yourself and several other Senators. S. 2011, if enacted, would provide for increases in rates of disability compensation for veterans, including the special clothing allowance for certain veterans severely disabled due to service-connected disability, and DIC for veterans' surviving spouses and children.

Section 2 of the bill would, on a one-time basis effective December 1, 1988, index rates of disability compensation for veterans and DIC for surviving spouses and children to the automatic cost-of-living adjustment (COLA) to take effect for Social Security benefits on December 1, 1988. This would provide an approximate increase in these rates of 4.2 percent. As I have already noted, our bill, S. 2267, would, if enacted, accomplish the same purpose, though by different means. Instead of indexing these benefit rates to this year's Social Security COLA, as proposed by S. 2011, S. 2267 would index them directly to the increase in the Consumer Price Index (CPI). Further, S. 2267 would provide for the automatic future annual indexing of these rates to annual CPI increases, a provision not included in S. 2011.

We estimate that enactment of S. 2011 would result in the following costs over the next 5 years:

Fiscal Year	Cost ($ millions)
1989	378.5
1990	452.4

1991	450.6
1992	448.5
1993	446.4
	2,176.4

For reasons enumerated earlier in support of adjustment of disability compensation and DIC based upon increases in the CPI, we cannot endorse S. 2011 in its current form. Rather, I reiterate my recommendation that the Committee act swiftly and favorably on S. 2267.

Another bill you have asked us to address today is S. 1805. This bill would provide that any payments received as a result of the settlement approved on January 7, 1985, by the United States District Court for the Eastern District of New York in the case In re: "Agent Orange" Product Liability Litigation (Case Number MDL No. 381) may not be considered for the purpose of several determinations made by the Administrator of Veterans' Affairs in individual cases. The cited litigation, as you know, resulted in a number of major corporations, which had manufactured Agent Orange, agreeing to pay $180 million into a settlement fund to be distributed among various members of the plaintiff class. Under this bill, any resultant payments to individuals would not be considered in determining VA-pension eligibility or rates, or eligibility for hospital and nursing home care.

12.

We are unaware of any reason to treat the proceeds from the Agent Orange settlement any differently from the proceeds of any other settlement, or any other income, for the purpose of determining entitlement to need-based veterans' benefits.

S. 1805, if enacted, would be discriminatory in favor of claimants receiving income from the Agent Orange settlement and would give rise to demands that other categories of income not be considered in determining entitlement to benefits. In fact, there is no difference in the need status of persons receiving this type of income from that of otherclaimants who might receive a court settlement in a different type of tort suit, whose countable income for pension and other purposes would include the settlement received.

Moreover, any assertion that the settlement proceeds constitute payment for injuries incurred in the military service and are therefore deserving of special consideration would be meritless. There has been no admission of liability on the part of the chemical companies and no determination of cause and effect has been made between any alleged exposure to Agent Orange and the subsequent development of adverse health effects. Further, the best scientific evidence currently available makes it extremely unlikely that such a cause-and-effect relationship will ever be found for the disabilities sustained by the class members.

Finally, the VA has in effect regulations for the granting of service-connected benefits for disabilities related by sound scientific and medical evidence to exposure to Agent Orange, as mandated by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law No. 98-542, 98 Stat. 2725, 38 U.S.C. § 354 note), enacted on October 24, 1984. In the event that there is a sound scientific and medical basis for establishing a nexus between exposure in service and a particular disability, a veteran is able to secure compensation from the VA for such disability under section 3.311a of title 38 of the Code of Federal Regulations.

The provisions in S. 1805 relating to VA pensions, in particular, are contrary to the basic purpose of the VA pension program, which is to provide benefits based upon need. After the pension program was extensively examined by the Congress, the Veterans' and Survivors' Pension Improvement Act of 1978, Public Law 95-588, was enacted, in order to eliminate inequities, anomalies, and inconsistencies which had developed under prior pension laws. Exclusion-of-income provisions such as those contemplated by the instant bill would result in different eligibility determinations or rates being applied to claimants who really have identical incomes, but from different sources--one of the anomalies which Public Law 95-588 sought to correct. A review of the categories of excludable income retained in section 503 of title 38, United States Code, reveals the exclusion of Agent Orange settlement proceeds would be completely out of character with the few, limited income exclusions which were retained when the section was amended.

We are unable to provide a cost estimate for this proposal due to the lack of specific data on the number of veterans or their survivors who would lose pension eligibility, or have their pension payment reduced, because they received a settlement from the cited litigation.

In view of the foregoing, we oppose enactment of S. 1805.

CONTRACTING

Mr. Chairman, there are two bills on today's agenda relating to contracting. The first is S. 2269, which you introduced at our request. This bill would allow the Veterans Administration to settle construction contract claims of more than $1,000,000 without obtaining a specific appropriation law. The Administrator would, however, notify the House and Senate Committees on Appropriations of any such settlement action.

Under the current procedures it has taken up to 1 year or more for construction contract claims to be paid after the date of settlement. Substantial interest charges on the settlement amount accrue during the time it now takes to secure passage of the specific appropriation law. If the requirement for a specific appropriation law were deleted, the delay between settlement and payment of claims would be lessened. In instances where there were sufficient funds in the contract account, the payment would be expeditiously processed within the VA with notification of the settlement to Congress. If the contract does not contain sufficient funds, a reprogramming or request for new budget authority would be necessary. It has been the VA's experience that reprogrammings are acted upon by Congress within 30-45 days.

If sufficient funds are not available in the working reserve for reprogramming, new budget authority would be requested to pay the settled claim. Under either process, Congress would continue to participate substantially in the payment of construction contract claims in excess of $1,000,000.

However, unlike the current procedures, interest would not necessarily have to accrue for an extended period of time if the notification and reprogramming option could be used.

The provision of title 38, section 203(b), United States Code, which requires that settlement cannot be made until the settlement is audited independently for reasonableness and appropriateness of expenditures would remain in effect. Therefore, all settlements would continue to be thoroughly analyzed and evaluated prior to payment.

This proposal would not produce any additional costs if enacted. Although substantial savings are expected to accrue, the amount cannot be determined with specificity because it will depend on unforeseeable factors. These include the number of claims filed, their amounts, the interest rates charged, and the periods of time saved between settlement of such claims and their payment.

I will now turn to discussion of S. 2306, which would authorize the use of multiyear contracts under certain circumstances. This is an Administrative proposal which you introduced at our request, Mr. Chairman. It has been the consistent view of the VA that appropriate use of multiyear contracting would provide significant savings to the Agency. We have supported prior legislative initiatives to authorize multiyear contracting.

17.

On May 20, 1988, Public Law 100-322 was enacted, authorizing the VA to use multiyear contracts for supplies and services needed at VA healthcare facilities. We support the broadening of this approach in S. 2306, since it would authorize appropriate use of multiyear contracts for all VA programs.

Multiyear contracting is one of several procurement techniques which may be used to acquire goods and services. The multiyear contracting method is identified in the Federal Acquisition Regulation (FAR) 17.103-1 as being appropriate for consideration if the acquisition meets the following criteria:

(1) The use of such a contract will result in reduced total costs under the contract.

(2) The minimum need for the item to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, acquisition rate, and total quantities.

(3) There is a reasonable expectation that throughout the contemplated contract period the department or agency will request funding for the contract at the level required to avoid contract cancellation.

18.

(4) There is a stable design for the item to be acquired and the technical risks associated with such items are not excessive.

(5) The estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.
(FAR Section 17.103-1).

The FAR further identifies multiyear contracting as a possible means for attaining one or more of the following objectives:

(1) Lower costs.

(2) Enhancement of standardization.

(3) Reduction of administrative burden in the placement and administration of contracts.

(4) Substantial continuity of production or performance, thus avoiding annual start-up costs, preproduction testing costs, make ready expenses, and phaseout costs.

(5) Stabilization of contractor work forces.

19.

(6) Avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contractor each year.

(7) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high start-up costs.

(8) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.
(FAR Section 17.102-3).

The VA presently acquires many goods and services which not only meet the criteria upon which multiyear contracting can be based under the FAR, but which also would enable the VA to attain many of the objectives and advantages of multiyear contracting. Until now, we have been using options as prescribed by FAR subpart 17.2 to gain some of the advantages of multiyear contracts. Indeed, there are many circumstances in which use of options is preferable to multiyear contracting. However, utilizing contracts with options, when multiyear contracting is clearly appropriate, is an inefficient methodology. When there are significant front-end costs which must be borne by the contractor, and the criteria for utilizing multiyear contracting are met, use of options places a contractor in the likely position of having to inflate the bid/offer in order to compensate for the risk that the Government will not exercise its option. The inability to use multiyear contracts therefore reduces competition for the requirements, because the contractors' risks render the contract less desirable to them. Diminished competition and the potential for such "contractor risk" will result in higher costs to be paid. Furthermore, the ultimate contractor, without assurances that options in ensuing years will be exercised (thereby allowing for appropriate amortization of initial capital expenditures), is less inclined to make such investments. Only enough resources will be invested to keep the equipment operational. By the expiration date of the contract, the overall neglect may result in higher maintenance contract costs for the ensuing contract period and a reduction in the equipment life. This situation is most likely to occur in contracts for the maintenance of elevators, medical equipment, and other major equipment systems.

Multiyear contracting provides equity to the contractor by eliminating an environment of doubt. Under the circumstances prescribed in S. 2306 and the Federal Acquisition Regulation, multiyear contracting provides an environment conducive to vendor competition for the stable requirements identified in the solicitation and an incentive for the contractor to make the initial capital investment which may be necessary for efficient contract performance.

Multiyear contracting shifts some of the risks of long term contracting to the Government. However, those risks, which are predominately associated with initial start-up costs and capital investments, are appropriately borne by the Government. Further if multiyear contracting is determined over time to be a means for obtaining, e.g., cost efficiencies, standardization of goods delivered under the contract, continuity of service, increased competition, and any of the other goals identified in S. 2306 and the FAR, that risk of bearing start-up costs may be one well worth taking.

S. 2306 would require the VA to promulgate regulations implementing the multiyear contracting provision. If the proposed bill becomes law, we will be including a requirement in those regulations that my office review all proposed multiyear contracts in order to be assured that they are being prudently used and that the risk we bear is justified by the advantages that we realize.

In summary, we do not view multiyear contracting as a panacea for our procurement system but, instead, as an acquisition strategy that, when judiciously used, will provide equitable and attractive contracting opportunities for our bidders/offerors and which will also provide goods and services to the VA at favorable prices. The VA therefore supports S. 2306, which authorizes the VA to use multiyear contracting under specific circumstances.

DRUG AND ALCOHOL TREATMENT AND REHABILITATION

Mr. Chairman, you recently indicated, through your staff, that you would like us to address S. 2105 today, as well. This bill would extend for four fiscal years the authority of the Veterans' Administration to contract for drug and alcohol treatment and rehabilitation services in halfway houses and other certain community-based facilities. While we agree with the principal purposes of S. 2105, we recommend that the Committee modify the bill in accordance with legislation we have proposed.

The VA contract program for veterans with alcohol and drug dependence disorders was initiated as a pilot project in 1980 pursuant to Public Law 96-22. Subsequent legislation, Public Law 99-166 § 101, extended the program through September 30, 1988. Under this program, the Veterans' Administration is authorized to contract for care, treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based facilities for eligible veterans suffering from alcohol and drug dependence or abuse disabilities. Through the use of halfway house contracts, veterans suffering from drug and alcohol abuse disorders, who begin treatment in a hospital detoxification ward, are able to continue rehabilitation in a supportive community-based environment. This helps to facilitate the difficult transition back into the community at large.

Approximately 94 VA medical centers now participate in the drug and alcohol halfway house program and they administer approximately 400 contracts with non-VA community-based halfway house facilities. Through the use of these community-based facilities VA can provide treatment for approximately 5000 patients. In our hospital setting, there are 3606 beds available in 103 inpatient alcohol treatment units. For patients suffering from drug dependency there are 934 beds in 51 VA medical centers. In a comprehensive evaluative study required by Public Law 99-166, we found that the mean per diem rate paid by the VA for halfway house care under this program is $26, contrasted with the average estimated cost of inpatient hospital care of $93/103 per day. In addition to its cost efficiency, the contract rehabilitation program has demonstrated its effectiveness. Follow-up revealed participants remained drug and alcohol-free for a longer period of time following their release from treatment than those whose treatment did not entail the contract approach.

Also, for these veterans, full-time employment and income earned in part-time employment increased. A decrease in medical costs for non-alcohol related illnesses was also noted. VA monitoring of the program during fiscal years 1984-87 evidenced the continuing need for drug/alcohol abuse treatment and rehabilitation in the veteran community, particularly among Vietnam era veterans. Over the past several years, studies emphasizing the importance of matching the treatment to the needs of a specific patient population have cited the VA contract program as an example. VA success with the drug/alcohol program demonstrates the effectiveness of the contract approach in achieving treatment and rehabilitation goals, as well as the cost efficiency of operating the program using the contract modality.

Although we support the intent of S. 2105, we recommend that the Committee adopt instead a provision which would authorize the VA to operate this contract program on an ongoing basis. We have submitted a bill, which you introduced as S. 2294 at our request, provisions of which would accomplish that purpose. Our bill would also eliminate the requirement for costly special evaluations which were initially helpful in assessing program viability. Given the program's record of continued success, such evaluations are no longer cost-effective.

We estimate extension of the drug and alcohol treatment contract program, which is included in the President's 1989 budget, will result in costs of $10.1 million in Fiscal Year 1989 and $50.6 million over the next five fiscal years. For the period of extension authorized by S. 2105 (4 years), we estimate program cost of $40.5 million. These figures were computed on the basis of data collected from FY 1985: identifying a per diem of $27 a day and participation of 7500 veterans per year for an average length of stay of 50 days.

Recognizing the established need to provide treatment and rehabilitation services for veterans with drug and alcohol disorders and the cost effectiveness of the contract approach, we express our support for the intent of S. 2105 but urge adoption of S. 2294, which would permit VA to contract on an ongoing basis for these services.

Mr. Chairman, I would be glad to answer any questions you or the members of the Committee may have.

The following information is provided in response to the points made by Kenneth Feinberg on pages 7 through 9 of his written testimony for the June 9, 1988 hearing on S. 1805, as requested by Senator Cranston.

First, Mr. Feinberg states that excluding Agent Orange settlement payments from income for purposes of the VA's pension and health care programs is "fully consistent" with the structure and purpose of the VA's programs. Mr. Feinberg bases this assertion on the following theory: Under the Agent Orange settlement distribution plan, payments are provided to the "neediest" individuals. As payments received from assistance organizations to low-income veterans are not counted as income in determining eligibility for need-based pension benefits, Mr. Feinberg argues that under the same rationale, proceeds from the distribution plan should not be included.

Mr. Feinberg's interpretation is based upon a misunderstanding of the rationale for the exception for payments received from assistance organizations. This exception is one of ten limited exceptions to the requirement in section 503 of title 38, United States Code, that "all payments of any kind or from any source" be included in determining pension eligibility. No exception is made for settlement proceeds, and there is no difference in the need status of persons receiving proceeds from the Agent Orange settlement and that of claimants receiving court settlements in different types of tort suits. The exception in section 503 for "donations from public or private relief or welfare organizations" was made because the receipt of welfare is generally predicated upon a recipient's other income, and to count welfare benefits for purposes of need-based pension eligibility would result in a series of back-and-forth adjustments in both pension and welfare payments. The situation with respect to the Agent Orange settlement is entirely different as it does not involve long-term, periodic payments and is not distributed based upon individual determinations of need. Recognizing that there was "a virtual absence of proof of causation" associating any of the disabilities or deaths of class members with exposure to Agent Orange, the court decided to compensate only veterans who were totally disabled or the heirs of deceased veterans, regardless of disease. In re "Agent Orange" Product Liability Litigation, 611 F. Supp. 1396, 1402, 1410 (E.D. N.Y. 1985), aff'd in part, rev'd in part, 818 F.2d 179, 183 (2d Cir. 1987). No need-based test will be utilized, and it would be mere speculation to hypothesize that the veterans or heirs who are to be compensated are the neediest in the class.

Second, Mr. Feinberg notes that the settlement in the Agent Orange litigation is a unique one, in that distribution is not based on traditional tort theory (which requires proof of causation), so that S. 1805 will not create an ill-advised precedent. We are unable to agree with this logic. In our view, the fact that no association can be demonstrated between Agent Orange and the injuries sustained by class members, if anything, would suggest that such proceeds are less worthy of special treatment than the proceeds from other settlements intended to compensate claimants for injuries actually caused by a tortious act.

Third, Mr. Feinberg states that the legislation will not result in a windfall to recipients because the compensation is modest and is directed to a "needy group of individuals," and no claimant will receive such a large award that participation in the VA pension or health care programs would become inappropriate. However, the same argument could be made with respect to any small settlement received by a participant in the VA pension or health care programs, which would be included for income computation purposes.

Finally, Mr. Feinberg states that exclusion of Agent Orange settlement proceeds as income "does not raise major budgetary considerations." As we have been unable to develop a cost estimate, due to the lack of specific data on the number of veterans or their survivors who would be affected by the proposal, we are unable to comment on this assertion.

VETERANS ADMINISTRATION
Statement of Kenneth E. Eaton
Chairman, Board of Veterans Appeals
To the Committee on Veterans' Affairs
United States Senate

June 9, 1988

Mr. Chairman, I appreciate having this opportunity to meet with your Committee to discuss the operations and performance of the Board of Veterans Appeals, particularly in view of the attention recently directed to the VA in connection with proposals for judicial review and for the establishment of the VA as a cabinet level Agency.

In order to assure proper responsiveness to the needs of our veterans, the Board has developed a system to monitor and measure productivity which has been an integral part of the BVA's management operations for many years. The Board regularly examines productivity at a variety of levels ranging from the micro-level, where the productivity of individual employees is measured, to the macro-level, where the entire BVA operation is examined as a single productive unit. Within the Board's Professional Service operations, the two forms of productivity measurement that are most universally employed are: (1) productivity measurement reports for individual staff attorneys; and (2) measurements of BVA Board Sections' performances in actual decision production relative to decision production goals.

BVA productivity measurement at the individual attorney level is a relatively simple process. At the time an appeal is first received at the Board, it is categorized into one or more of approximately 90 different issue classifications that are used for document tracking and productivity measurement purposes. Standard unit time values have been assigned to each of these appellate issue categories based upon analyses of the attorney work requirements associated with these various issue categories. At the conclusion of an evaluation period, summaries are developed showing each staff attorney's decision production during that time period. Included in these summaries are totals of the standard unit time values associated with each staff attorney's decision production. Productivity for each individual attorney is then determined by computing the ratio of his or her total standard unit hours to the hours that individual was actually on duty and actively engaged in decision production activities.

Individual productivity calculations are routinely developed for each BVA staff attorney in grades GS-9 through GS-14 on both a quarterly and an annual basis. These calculations are then provided to the individual attorneys and their supervisors, Board Section Chief Members, in a report format that also incorporates a formal rating of the quality of their work products, as determined by their supervisors. The two numerical factors in these reports representing productivity and quality constitute two of the significant elements of the formal performance plans applicable to BVA staff attorneys. In addition to the regularly recurring, annual performance evaluations, productivity data are utilized in determining attorney eligibility for career ladder promotions through grade GS-14. Productivity data is also used by BVA management for a variety of other purposes unrelated to personnel evaluations, such as Board Section assignments.

Productivity measurement at the Board Section level is a less formally developed process, and the Board's uses of productivity-related information are oriented towards motivation rather than evaluation needs. A weekly production goal of 40 decisions has been established for each Board Section, and feedback is provided to the Board Sections at regular intervals showing their progress towards meeting the production targets. A production year running from April 1 through the following March 31 has been established for Board Section production purposes. At the conclusion of the production year, the relative performance of the respective Board Sections over the preceding year is helpful in determining the effectiveness and efficiency of the entire BVA operation.

At the risk of over simplification, it can be said that the three most critical aspects to management of the Board from a production perspective are the characteristics of quantity, quality and timeliness. These three characteristics are so closely interrelated that a significant change in any one of these areas is likely to affect some other. This interrelationship aspect is particularly relevant to the characteristics of production quantity and production timeliness. BVA Response Time of Appeals has long been a matter of considerable interest to many parties. Because the Board's expected workload can be projected with some degree of accuracy on at least a short-term basis, any BVA slippage in meeting production targets will ultimately result in an increased response time on appeals. The BVA has organizational production goals that must be met if we are to accomplish our mission in a satisfactory manner. We believe that the best way to assure that the Board accomplishes its mission is to provide clearly defined and reasonable production goals at each definable organizational subunit.

The BVA has come under some criticism in the recent past for being excessively preoccupied with production matters, and that, ultimately, veterans are the ones who will suffer as a result of our excessive emphasis on productivity. We believe that this is an unfair characterization. Management of the BVA as an organization and accomplishment of its organization mission require a broad perspective. The essential role of management in this process is to be able to view the VA appellate program in this broad perspective and then to determine an appropriate balance between imperatives for productivity and timeliness and the requirements for review, research, and thoughtful deliberation on the part of both attorneys and Board Members.

A significant accomplishment of the BVA has been the successful reduction in Response Time of Appeals. BVA Response Time of Appeals, our most commonly used indicator of the Board's capacity for handling appeals on a timely basis, had risen to an intolerable level by the early 1980's due to steady increases in the rate of appeal filings experienced nationwide beginning in the mid-1970's. The structural expansion to 21 board sections facilitated by the passage of Public Law 98-223, combined with the increased budgetary resources necessary to support this expansion, allowed us to turn the tide on the appeals backlog and reduce our response time to roughly 125 days.

We believe that our response time of 125 days strikes a reasonable balance between appellants' desires for a prompt resolution of their appeals and the time requirements for thorough review and the correction of any due process defects by the Board. Our response time has remained relatively constant over the past 2 years despite some rather wide fluctuations in the Board's average employment level that resulted from the staffing restrictions we had to apply during FY 1986 to accommodate the funding constraints associated with the Gramm-Rudman-Hollings funding sequestrations of that year. We began FY 1987 at an employment level of only 392 FTEE, which was 35 FTEE below our congressionally authorized strength of 427 FTEE. Consequently, our first order of business in FY 1987 was to begin the process of recruiting qualified replacement staff and providing them with the training necessary to play productive roles in the Board's operations. This process was completed by the middle of FY 1987, and our response time and other production indicators for the second half of last fiscal year reflected the restoration of our previously impaired productive capacity. For the current fiscal year, the Board's personnel strength is approximately at our fully staffed and congressionally authorized level. I have included a table (Table 1) with this prepared statement summarizing some of our most relevant production related statistics over the past 5 fiscal years to provide you with an overview of our productive endeavors.

Our overall timeliness, as indicated by our response time, is quite respectable. I believe that the term, "backlog," which we have grown to accept over the years to describe the VA appellate program's pending workload, is somewhat misleading. We have come to refer to all appeals that are pending in any phase of the appellate process as part of an appeals "backlog," when it is only natural to expect some volume of appeals to be in process and awaiting final decision under the highest capacity and most streamlined appellate system that would be theoretically conceivable.

Over this past year we have had an average of approximately 15,500 cases physically on hand at the Board in various processing phases. To provide an example of how these appeals are distributed at the Board from a processing standpoint, we have broken down the Board's 15,302 cases that were pending as of the end of August 1987. Of these cases, 6,433 or 42.0% were charged to our Hearing Section, the majority of which were in the hands of the various veterans service organizations for review and preparation of briefs on behalf of the appellants; 1,411 or 9.2% were under the control of our Correspondence and Special Correspondence and Review Sections, which are responsible for handling much of the Board's voluminous correspondence requirements, including appeal-related inquiries from congressional offices, veterans and their families, veterans service organizations, and a host of other correspondents; 970 or 6.3% were in the hands of other sections of the Board's Administrative Service for some required procedure; and 4,847 or 31.8% were located either in a Board Section or elsewhere in the BVA Professional Service. Only 1,641 cases or 10.7% of the Board's total volume were in a pending docket action status awaiting BVA action. Given the BVA's average weekly production of between 800 and 850 appellate decisions, the 1,641 cases that were pending docket action amount to approximately a 2-week workload. We have found through experience that, given our present size and section configuration, the Board operates most efficiently when our physical case inventory is between 12,000 and 16,000 appeals. When our inventory drops much below this ideal level, our efficiency begins to drop. When viewed from this inventory perspective, I feel that the 15,500 decisions we have pending at the BVA on the average cannot in all fairness be categorized as a backlog.

This same inventory rationale is applicable to the volume of appeals that are pending in the field in varying appellate process stages. For the past 2 years there have been roughly 45,000 appeals pending in the field at all times awaiting final action, if we include in this figure all pending Notices of Disagreement and all Substantive Appeals that have not yet been perfected for certification to the BVA. It is misleading to classify these cases as a backlog, however, because the appeals are not yet ready for BVA certification. Under the arrangements that have been in effect between the Department of Veterans Benefits and the Board for the past 2 years, DVB field stations are instructed to immediately forward to the Board all cases that have been certified for BVA action. Over the past 3 years, 287 calendar days elapsed on the average appeal between the time that a Notice of Disagreement was first received and the time that the Substantive Appeal was certified to the BVA. While I cannot speak for DVB as to the processing time that ideally should be necessary between receipt of a Notice of Disagreement and certification of a Substantive Appeal to the Board, it is reasonable to assume some volume of appeals will always exist in this pre-certification status.

I believe that real progress has been made in recent years in reducing the overall time required to decide appeals within the entire VA system. There is always room for improvement, and we intend to continue to press for such improvement wherever we can identify delays in the appellate system. As mentioned earlier, we feel that the response time level at which we have been operating for the past 2 years strikes a reasonable and desirable balance between the needs for timeliness in the resolution of appeals and the allowance of a sufficient timeframe on each appeal to assure adequate standards of due process consideration and thoughtful deliberation on the part of the Board. We do not want to seek timeliness at the expense of quality.

Over the past few years we have intensified our focus upon the Board's quality review program. Our reasoning behind this increased attention is that as the Board has grown to meet the increased demands placed upon it by VA appellants, it has become more difficult yet simultaneously more important to ensure that we retain high standards of quality and a certain degree of consistency among Board Sections in their treatment of veterans' appeals. We have formalized this program and included it in our annual Program Operating Plan that we provide to the Administrator. The specific objectives we have set forth for this program are as follows: (1) to assure that all appellate decisions will meet the Board's standards of substantive accuracy and legal sufficiency; (2) to assure that all written decisions convey the Board's findings clearly and effectively with compassion and sensitivity towards the veterans and their dependents; and (3) to assure that a certain level of consistency is maintained among decisions and Board Sections, while still preserving the Board Members' decision-making independence. Before commenting on the effectiveness of this program, I will briefly describe how our quality review system works.

The Board's quality review program is a multi-tiered operation. After a signed decision leaves a Board Section but prior to its dispatch from the Board, it is forwarded to our Appellate Index and Retrieval Staff (AIRS) where it undergoes editing and examination by a rotating group of predominately junior attorneys who form the first level of our quality review structure. 100% of BVA decisions are subjected to a "preliminary screening" at this level. Any decision that appears to contain any defect of either a substantive or nonsubstantive character is withdrawn from the normal processing flow and directed to the next level of quality review. This next level of quality review is staffed with select senior attorneys who will analyze in depth each decision referred to their attention. Decisions found to contain any minor or nonsubstantive errors will be returned to the initiating Board Section for correction and returned to the normal processing flow. Decisions that appear to be substantively flawed or that contain any significant error will be forwarded to one of the Board's two Deputy Vice Chairmen (DVCs), who constitute the highest level of quality review. A random sample of two decisions from each Section, or 42 decisions a week, are automatically referred to the DVCs. In addition, all decisions of a certain type are referred to the DVCs, including reconsiderations, administrative allowances, dismissals of an issue and decisions involving certain subject matter, such as radiation and loan guaranty waivers. The DVCs will review and analyze decisions that reach their level within the quality review chain, and any issues that remain doubtful will be resolved between the DVCs and the Chief Members of the originating Board Sections, after which they will be dispatched as a final decision. Copies of all dispatched decisions are then sent to AIRS where they again undergo a final 100% screening by BVA professional staff members in the course of being indexed for inclusion in the Board's decision data base. Should any discrepancy be discovered during this procedure, the decision would be referred to one of the DVCs for a determination as to whether some corrective action is appropriate.

I believe that our quality review program has become an invaluable part of the BVA system that is providing us with demonstrable, if not entirely measurable, results. Quantitative program indicators for any quality review program are tenuous at best. Recognizing this limitation, one approach we have taken for evaluating our quality review operation is to first establish certain program indicators that will clearly reflect the breadth and intensity of our quality review effort. The percentage of BVA decisions subjected to intensified quality review refers to the group of decisions that, as a minimum, have gone to the second level of quality review. The second indicator (i.e., number of BVA decision categories subjected to 100% quality review) consists of appeal categories which, due to the topical content, may have a higher propensity for error or may be more highly visible as a result of public interest.

In addition to these indicators which are intended to quantitatively measure the extent of the Board's effort applied to quality review, we have only recently attempted to close the feedback loop by establishing, on a trial basis, two indicators of quality that originate from sources external to the BVA. The first of these two indicators is legitimate motions for reconsideration received which allege obvious decision errors. Please note that our use of the term "legitimate" in this context is not intended to be an evasive measure; we merely wish to exclude any frivolous reconsideration requests that we may receive. The second indicator consists of post-decision referrals from indexers in AIRS to the DVCs identifying substantive decision errors. Lastly, these somewhat quantitative indicators are supplemented by the non-quantitative indicators that have traditionally served as measures of our performance. Prominently included in this group is the feedback we receive in a variety of forums from various interest groups, including veterans service organizations, Members of Congress, and other interested parties, our critics included.

I believe that our quality review program has influenced the general quality of the Board's decisions in a very positive manner and that we are achieving the objectives set out for the program. One of the few external quantitative performance measures that we have tentatively established for the program, i.e., reconsideration requests, have been running at a rate that is between 5% and 10% below that of the preceding year. From a content standpoint, BVA decisions are longer, more complex, and more detailed. The average decision dispatched during the first half of FY 1987 was over 10% longer than the average decisions dispatched 2 years ago at the outset of our efforts to enhance the quality review effort. Ultimately, however, the final analysis of the effectiveness of our program will rest with the judgment of others and will be made through more qualitative and intuitive processes.

There has been considerable interest generated in the recent increase in the number of remands ordered by the Board of Veterans Appeals. Our ongoing observations indicate that the quality level of the appeals function at VA field stations is consistently high, with certain minor exceptions that we will enlarge upon in one area of our remand discussion. An indicator that we believe exemplifies the generally high quality level of the field station appeals function is the number of BVA allowances reversing field station decisions compared to the number of field station adjudicative decisions made during the same period. In FY 1986, there were a total of 5,362 BVA allowances versus a total of 5,147,182 adjudicative decisions for an overall reversal rate of .1%. Similarly, there have been 5,270 BVA allowances versus 4,970,556 adjudicative decisions, resulting in a reversal rate of .1% for FY 1987. I believe that these statistics are indicative of a high quality field station appellate program.

The fact that BVA remand rates have risen in recent years is a matter that is of both interest and concern to the BVA. Without speculating at this point as to the reasons underlying this rise in the BVA remand rate, we have first reviewed the indicator that we consider to be most indicative of whether the Board's remand rate is generally well-founded. The indicator we use for this purpose is the Benefits Granted Rate, which is an expression on a percentage basis of the rate at which benefits are granted on remanded appeals (e.g., during FY 1987, benefits were granted in 1,781 remanded appeals and a total of 8,564 appeals were remanded). For FY 1982 through FY 1987, BVA remand rates and benefits granted rates were as follows:

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
BVA Remand Rate	15.6%	15.5%	14.9%	16.3%	18.8%	20.7%
Benefits Granted Rate	22.1%	22.0%	20.9%	24.1%	21.9%	20.8%

Although the Benefits Granted Rate has dropped slightly from the peak rate of 24.1% experienced in FY 1985, the overall rate has not varied nearly as much as the BVA remand rate during the extended time period.

While we would like to be able to point to some single factor that we have identified as the principal cause behind our remand rate increase, this, unfortunately, is not possible. Our examinations and analyses of this issue have led us to several factors that we believe are all partially responsible for the changing trends in our remand rate. These factors are as follows:

(1) Effectiveness of Advocacy. Veterans service officers and other representatives are becoming increasingly more effective as advocates on behalf of VA appellants. Improved training and other resource and staffing changes have clearly resulted in enhanced levels of representational services to veterans. Like all of us, veterans service officers are being evaluated "by the numbers" within their own organizations relative to their performances in the representational aspects of their positions. They too are aware that 20% to 25% of all remanded appeals result in an allowance of benefits in the field and that some percentage of those appeals that return to the Board from remand will also be allowed. Consequently, service officers will logically press for a remand of an appeal where an allowance does not appear likely. Our experience indicates that service officers in general have become more tenacious and effective in pursuing remands.

(2) Aging Appeal Base. As we draw further away time-wise from the periods of armed conflict that have been responsible for a significant number of the appeals that appear before the Board, we tend to see fewer appeals, as a percentage of the Board's overall appellate workload, in which the issues are relatively simple and the BVA can render a correspondingly simple decision to either allow or deny with no further development requirements. Events and supporting evidence tend to become hazy with the passage of time, thus lending an additional element of complexity to the Board Members' decision-making responsibilities. We believe that such added complexities will inevitably lead to some additional remands.

(3) BVA Handling of Special Category Appeals. Certain special categories of appeals have tended to attract considerable attention from within the veteran community and the public at large. We must frankly admit that the BVA has a somewhat heightened awareness of case development needs when confronted with appeals within these special categories, which at various times have included Agent Orange appeals, ionizing radiation appeals, appeals of former POWs, and PTSD appeals. While the remand rates for most of these special category appeals are currently in line with the Board's overall remand rate, our remand rate for PTSD appeals rose from 18.8% in FY 1984 to 23.5% in FY 1985 to 33.0% in FY 1986, and to 37.0% for FY 1987. We suspect that this trend may result, in part, from the combined influences of evolving attitudes towards this disorder on the part of medical professionals and increased Board Members' sensitivity to assuring that exhaustive levels of detail are followed in the development of this high profile area of appellate activity.

(4) Other Notable Appellate Issue Areas. Another area that we believe has contributed to the rise in the BVA remand rate is waiver of recovery of overpayments. Our remand rate for appeals connected with waiver of recovery of overpayments has grown from a

rate of 24.8% in FY 1984 to 29.7% in FY 1986, and to 35.9% in FY 1987. Since the Board annually decides over 2,000 appeals involving waiver of recovery of overpayments, a significant change in the remand rate for this category of appeals will have some affect on the overall remand rate. We suspect that there may be several factors responsible for this high remand rate, including some of the various computer matching programs that have been activated for the purpose of detecting improper payments. A second important factor here concerns the functional area at the regional office level that is responsible for development of appeals involving waiver of recovery of overpayments. The fact that development of these appeals is the functional responsibility of the Committees on Waivers and Compromises rather than the Adjudication Division may have some bearing on their potential for remand.

Another appeal category that we feel may be relevant to this matter is loan guaranty appeals. Although the Board's remand rate on loan guaranty appeals has remained relatively constant, it has always been high (i.e., roughly 35%). What has changed, however, is the volume of loan guaranty appeals that are being decided by the Board. In FY 1983 the BVA decided 226 loan guaranty appeals. This figure rose to 317 in FY 1984; to 414 in FY 1985; to 713 in FY 1986; and to 945 in 1987. This appellate activity level is not particularly surprising, given the general level of activity in the real estate and mortgage fields in recent years, and we believe that this has contributed to the rise in our remand rate.

Mr. Chairman, this completes my prepared statement. I will be happy to answer any questions that you may have.

Table 1 Board of Veterans Appeals - Appeals Statistical Data

	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987
FIELD WORKLOAD DATA*					
Appeals Filed (NODs)	69,391	61,328	63,045	63,850	63,570
Dispositions	64,919	64,621	67,534	60,677	62,487
% Allowed	13.5%	12.7%	12.4%	12.5%	12.5%
% Closed	20.3%	21.7%	26.4%	22.0%	22.0%
% Withdrawn (and Other)	10.7%	10.2%	10.4%	0.5%	10.5%
% Certified to BVA	55.5%	55.4%	50.8%	55.0%	55.0%
Pending - End of Period	49,498	46,818	44,145	45,737	46,625
BVA WORKLOAD DATA					
Receipts	41,226	43,811	43,457	43,584	41,491
Dispositions	38,591	44,064	45,273	42,003	41,296
% Allowed	13.7%	13.8%	13.3%	12.8%	12.8%
% Remanded	15.5%	14.9%	16.3%	18.8%	20.7%
% Withdrawn (and Other)	1.0%	0.9%	1.1%	1.2%	1.4%
% Denied	69.9%	70.4%	69.3%	67.2%	65.1%
Pending - End of Period	14,750	14,497	12,681	14,262	14,457
Travel Board Hearings	464	587	708	645	665
Offices Visited	34	48	50	48	51
Categories of Appeals					
Disability Compensation	76.6%	76.3%	75.7%	75.2%	75.7%
Disability Pension	6.4%	7.1%	6.9%	6.5%	6.1%
Medical	1.3%	1.6%	1.7%	1.6%	1.3%
Insurance	0.4%	0.3%	0.3%	0.3%	0.2%
Death	5.7%	6.0%	6.1%	6.1%	6.1%
Training	2.3%	2.2%	1.8%	1.8%	1.4%
Waiver	5.3%	4.5%	5.3%	5.4%	5.2%
Loan Guaranty	0.6%	0.7%	0.9%	1.7%	2.3%
Reconsiderations	0.5%	0.6%	0.7%	0.7%	0.7%
Character of Discharge	0.2%	0.2%	0.2%	0.2%	0.2%
FIELD AND BVA COMBINED					
Final Dispositions	61,518	66,152	71,095	61,411	60,851
% Allowed	22.8%	21.6%	20.2%	21.1%	21.5%
% Closed	21.5%	21.1%	25.0%	21.7%	22.6%
% Withdrawn (and Other)	11.9%	10.5%	10.6%	11.2%	11.7%
% Denied	43.8%	46.8%	44.2%	46.0%	44.2%
Pending - End of Period	64,248	61,315	56,826	59,999	61,082
Field: NODs	21,609	22,236	20,707	25,448	25,949
Subs. Appeals	27,889	24,582	23,438	20,289	20,676
BVA: Subs. Appeals	14,750	14,497	12,681	14,262	14,457

* Field workload data estimated for FY 1986 and FY 1987

The provisions of 38 U.S.C. § 4009 are as follows:

> (b) The Administrator shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Such arrangement will provide that the actual selection of the expert or experts to give the advisory opinion in any individual case will be made by an appropriate oficial of such institution.

Attached is a copy of the applicable portion of MBVA-1, Part II, regarding Indpendent Medical Expert opinions.

(a) If the appellant is represented, the opinion will be routed to Special Correspondence and Inquiries so they can furnish the representative a copy of the opinion and afford 60 days for review and comment.

(b) If the appellant is represented by a service organization with Central Office representatives, the opinion will be routed to the Hearing Section as provided in paragraph 6.09b(4) for review and comment by the representative. A period of 60 days will be allowed for this purpose.

(c) If the appellant is unrepresented, the opinion will be routed to the designated Medical Adviser to determine whether the opinion can be released to the appellant. Thereafter, the case will be routed to Special Correspondence and Inquiries so that a copy of the opinion can be furnished the appellant. Where the opinion cannot be released to the appellant, a summary of the opinion will be furnished to the appellant. In either event, 60 days will be allowed for review and comment.

Also see paragraph 5.05 4c. On return, the Section will give consideration to whether the circumstances warrant requesting an opinion from an independent medical expert. If an IME opinion is requested, paragraph 7.23 will be followed.

(3) **Decision.** If no further opinion is indicated, and the case is in readiness for a decision, the decision will be prepared incorporating, in whole or in part, the medical opinion obtained. Quoting the entire text of the opinion should be the general rule and not the exception. In the decision, the physician(s) giving the opinion should be identified by specialty, rather than by name. In addition to quoting the text of the opinion, the decision must show the basis for accepting or rejecting the opinion. This can best be accomplished by providing the rationale in the Discussion and Evaluation. After the decision has been signed but before it is sent to the Appellate Index and Retrieval Staff (AIRS) it should be released through the Chairman's office.

c. **Index to CMD Opinions.** Access to prior CMD opinions may be gained through the use of the Index to BVA Decisions I-01-1. These opinions are listed under the heading "Chief Medical Director Opinions (CMD)" or an appropriate medical subject heading.

7.23 INDEPENDENT MEDICAL EXPERT (IME) OPINIONS

a. **General Policy.** When in the judgment of the Board expert medical opinion, in addition to that available within the VA, is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more independent medical experts. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics or medical institutions, with which arrangements for such opinions have been made by the Administrator of Veterans Affairs. Actual selection of the expert or experts to give the opinion in an individual case will be made by an appropriate official of the institution. (38 U.S.C. 4009; 38 CFR 19.177)

b. **Selection of Institution.** The Chief Medical Director, acting for the Administrator, has made arrangements with a number of eminent medical schools, universities and clinics to furnish advisory medical opinions at the request of the Chairman. The designee of the Chief Member will contact the Secretary to the Vice Chairman for the name of the medical school to be used.

c. **Initiation of Requests for IME Opinions—General.** Requests for IME opinions may be initiated on the Section's own motion or as a result of a request of an appellant or his/her representative, including Members of Congress. Members of the Board are encouraged to request the use of independent medical experts on their own motion. The Board will honor all reasonable outside requests for IME opinions. Only medical questions, as distinguished from adjudicative questions, will be submitted. When it is decided, on the basis of medical controversy or complexity, that an opinion of an independent medical expert is to be sought, it is a matter of judgment in the individual case as to whether it is desirable to first obtain an opinion from the Chief Medical Director, if such opinion is not already of record. If a CMD opinion is first obtained and it is favorable to the appellant, the Section will usually decide the appeal without proceeding further.

d. **Denial of Requests for IME Opinions.** When an IME opinion has been requested by an appellant or his/her representative and, in the judgment of a Section, the medical question involved does not warrant obtaining such an opinion, the request may be denied. However, the BVA decision must contain "Law and Regulations," "Findings of Fact," and "Conclusions of Law" supporting the denial of the request. See also par. 7.23m. The tentative decision must be routed through the appropriate Deputy Vice Chairman prior to sending it to AIRS.

e. **Preparation of Requests for IME Opinions and Control Through VA Office**

(1) **Letter Requesting Opinion.** The submission of the medical question will be by letter from the Chairman addressed to the institution selected. The correspondence symbol of the Section will be used. The submission should be concise and specific in pointing out the medical problem, and drafted in a way to elicit reasoned opinions. The name of the person or organization requesting the opinion should not be identified. No mention should be made in the letter to the effect that the specialist should not be connected with the VA. Reference should be made, however, to the amount of the fee, to the need for a bill and to the need for the Social Security number of the specialist giving the opinion, if payment is to be made direct to him/her. This could be accomplished by language substantially as provided in Standard Paragraph 210 of the Dictation Handbook, HBVA-1. An original, one white tissue and two yellow tissues will be prepared.

(2) **Letter to VA Office, Center or Director, Washington Regional Office, and Diary.** Except as to requests for opinions from local institutions, a letter will be prepared transmitting the claims folder to the nearest VA regional office, center or hospital for control purposes and referral to the institution. The name and address of the nearest VA office will be obtained from the Secretary to the Vice Chairman. Where the request is to a local institution such as the George Washington University or Georgetown University, a letter will be prepared transmitting the claims folder to the Director, Washington Regional Office. An original, one white tissue and two yellow tissues will be prepared. A copy of the letter to the institution will be included with letter to the VA office. An original and a copy of a Diary Slip (VA Form 21-693) with a 60-day suspense will also be prepared.

(3) **Responsibility for Preparation.** The letter requesting the opinion and the letter to the VA office will be prepared by an Attorney Adviser designated by the Chief Member.

f. **Approval and Routing of IME Opinion Requests.** The Attorney will review the claims folder and any attachments for completeness of the pertinent evidence of record, including service medical records. It is of the utmost importance that an accurate and complete listing of all records be placed on the letter to the VA field office, as this constitutes the official list of the records sent, both for the Board and the VA field office, and assures return of all the records. (See par. 7.24h.) This must be checked by the Attorney. The Chief Member will assume full responsibility for the accuracy, final review and signing the name of the Chairman on the letter requesting the opinion and the letter to the VA field office controlling the case. The Section Secretary will be responsible for assuring that a proper diary is prepared and that the case with the complete records is routed (1) to the Statistics Section, for recording purposes, obligation of funds and detachment of two copies of the letter requesting opinion and VA Form 1-4287, (2) to Correspondence Section for notification to interested parties and (3) to Dispatch.

g. **Request for Second IME Opinion in Same Case.** When a second request for an IME opinion in the same case is prepared, it will be forwarded to the Vice Chairman, accompanied by a memorandum with a full explanation of the reason(s) for the request.

h. **Name of IME.** In the event the medical school inquires as to whether the name of the independent medical expert will be kept in confidence, the response should be substantially as follows:

"While the name is not routinely released, it may be made available to the appellant or his/her representative, upon request, pursuant to the Privacy Act and recent amendments to the Freedom of Information Act. The name of the medical expert provides the identification necessary for an appellant to ascertain, through readily available publications, the qualifications of the expert and thereby evaluate the extent of expertise involved. There is no basis for withholding this information under the exemptions specified in the Freedom of Information Act or Privacy Act. Moreover, it is an element of administrative due process that an appellant be afforded an opportunity to present evidence and/or argument on all data relevant to the appeal."

i. **Action on IME Opinion**

(1) **Review of Adequacy of Opinion.** The opinion of the independent medical expert will be referred by Records and Docket Section on receipt to the Executive Assistant to the Chairman for review of adequacy of response.

(2) **Referral by Office of Executive Assistant.** Upon completion of review by the Executive Assistant, the case will be routed through the Statistics Section for certification of payment of fee(s). Additional routing will be made as follows:

(a) If the appellant is represented, the opinion will be routed to Special Correspondence and Inquiries so they can furnish the representative a copy of the opinion and afford 60 days for review and comment.

(b) If the appellant is represented by a service organization with Central Office representatives, the opinion will be routed to the Hearing Section as provided in paragraph 6.09b(4) for review and comment by the representative. A period of 60 days will be allowed for this purpose.

(c) If the appellant is unrepresented, the opinion will be routed to the Medical Adviser to determine whether the opinion can be released to the appellant. Thereafter, the case will be routed to Special Correspondence and Inquiries so that a copy of the opinion can be furnished the appellant. Where the opinion cannot be released to the appellant, a summary of the opinion will be furnished to the appellant. In either event, 60 days will be allowed for review and comment.

Also see par. 5.05.4c.

(3) **Section Action Prior to Preparation of Decision.** The Chief Member will assure that an IME opinion obtained in the case under consideration has been properly referred as required by subparagraph (2) above. If it is decided to rely in part on an IME opinion obtained in another case, and the appellant is represented by a service organization with Central Office representatives, the case with the pertinent IME folder(s) from the Research Center will be forwarded to the office of the Vice Chairman by informal memorandum so indicating. The Secretary to the Vice Chairman will obtain and attach a copy of each such IME opinion to the case. The case will then be referred to the service organization representative through the Hearing Section by VA Form 3230 reading substantially as follows:

> "The Board previously secured IME opinion(s) in other cases which would seem to have some applicability to the case. A copy of each IME opinion is being referred for your review in order that you will be aware of the opinion and have an opportunity to make any desired supplemental presentation."

(4) **Decision.** Once the case is in readiness for a decision, the decision will be prepared incorporating, in whole or in part, the expert medical opinion(s) obtained or relied upon. Where the opinion was obtained in the case under consideration, quoting the entire text of the opinion should be the general rule and not the exception. In addition to quoting the text of the opinion, the decision must show the basis for accepting or rejecting the opinion. This can best be accomplished by providing the rationale in the Discussion and Evaluation. When the opinion was obtained in another case, care must be exercised in determining the extent that exact quotation is appropriate. IME opinions can be of great help to us in promoting wider acceptance of appellate decisions. Use them in as much detail as possible. The physician(s) giving the opinion should be identified by specialty, rather than by name, and phrased so as to reflect his/her eminent qualifications. The name of the institution from which the opinion is received will not be identified by name in the decision. Where an IME opinion obtained in the case was requested by a Member of Congress and obtained from his/her home State, the name of the institution giving the opinion will be shown in the letter transmitting a copy of the decision to him/her. A notation should be made on the Briefface instructing the Correspondence Section to include the name of the institution in the letter transmitting the decision. After the decision has been signed but before it is sent to AIRS it should be released through the Vice Chairman's office.

j. **Extra Copy of Board's Decision.** One extra copy of the Board's decision will be made and furnished the Statistics Section. The Section Secretary will include this requirement in the total number of copies annotated on the Brieface. (See par. 6.20.1d(1).)

k. **Action by Correspondence Section.** The Correspondence Section will complete all action necessary to release the case. In those instances where the institution giving the IME opinion is not named in the decision, and the opinion was requested by a Member of Congress, the name of the institution will be included in the letter transmitting a copy of the decision to him/her, provided the institution is located in the home State of the Member of Congress. This could be accomplished by adding a sentence substantially as follows:

> "For your information, the IME opinion was obtained
> from ______________________________."
> (Insert name of institution)

The decision and correspondence with the claims folder will be referred to the Executive Assistant for action.

l. **Action by Secretary to Executive Assistant.** When the correspondence is in readiness for release, the Secretary to the Executive Assistant will check the IME opinion in file for notation of certification of payment to Central Office Finance Division. If payment has been certified, the Secretary will forward one copy of the appellate decision to the Statistics Section and release the case for dispatch of the decision. If payment has not been certified, the Secretary will decentralize the case through the Statistics Section for completion of certification of payment and return of folder to the Executive Assistant.

m. **Completion of VA Form 1-4287 When IME Opinion Is Requested.** Where a request for an IME opinion is of record, the Section will complete VA Form 1-4287. A complete explanation of the reasons for either honoring or not honoring the request should be entered in item 9 of the form and in the decision when the appeal is denied. (See par. 7.23d for instructions with respect to preparation and processing of the BVA decision.) See paragraph 7.22c(4) for instructions on completion of the form. This form will be forwarded with the claims folder and one copy of the decision to the Statistics Section.

7.24 ARMED FORCES INSTITUTE OF PATHOLOGY (AFIP) STUDIES INSTITUTED BY BOARD

a. **General Policy on Initiation of Pathological Specimen or Slide Study.** A pathological specimen or slide study or a further study of specimen tissue or slides previously examined by the Armed Forces Institute of Pathology may be obtained from the Institute on the Board's own motion or as a result of a request by an appellant or his/her representative or Members of Congress.

b. **Preparation and Approval of Requests for AFIP Studies**

(1) General. It is essential that development be complete before requesting an AFIP study. This includes obtaining the following, if not already of record, as applicable: Pertinent clinical records and X-rays; pertinent slides and blocks not already in possession of the Armed Forces Institute of Pathology; and, in death cases, the complete autopsy report, if any.

(2) **Referral to Medical Member.** As soon as it is determined that a case may be ultimately referred to the Armed Forces Institute of Pathology and before any request for clinical records or pathological material (either through correspondence or by remand) is made, the claims folder should be referred to the Medical Member in the Section for a preliminary contact with the Armed Forces Institute of Pathology. The Reference Slip (VA Form 3230) to the Medical Member should contain the name of the veteran, age during service, VA file number, and Social Security number; the date when the diagnosis was first made and the veteran's age at that time; the length of time that elapsed postservice before the diagnosis was first made; name of the hospital or other source contributing the specimen material; the dates of hospitalization, and the date of surgery or autopsy, if applicable. All relevant hospital records and pathological reports should be flagged. The Medical Member will make an entry on the Brieface (VA Form 1-4030) indicating whether the Armed Forces Institute of Pathology has accessioned the pathological material, if a report exists and

Office of the Chairman
Board of Veterans Appeals
Washington, D.C. 20420

March 10, 1988

MEMORANDUM
NO. 01-88-19

SUBJ: IME Requests by Service Organizations

1. GENERAL

The Board has established a special procedure to facilitate action on requests for opinions from independent medical experts (IME opinions) from service organizations or other representatives. The use of this procedure by representatives is optional. It is a supplement to existing procedures for requesting IME opinions and does not replace any of those procedures.

2. ACTION BY REPRESENTATIVE

When a representative wishes to request an IME opinion in a case, a brief memorandum should be prepared explaining the reasons why an IME opinion is desired. In a case involving an informal hearing presentation, the request should be included in the presentation. The memorandum should be inserted in the claims folder. A VA Form 3230 or similar transmittal form should be prepared and securely attached to the outside of the claims folder. It should be addressed to the Director, Administrative Service, room 343. The words "IME Request" should be entered on the form in large letters. The claims folder should then be hand carried to the Director's office.

3. ACTION BY DIRECTOR, ADMINISTRATIVE SERVICE

Upon receipt of the case from a representative, the office of the Director, Administrative Service, will ensure that the Brieffache is associated with the claims folder and complete any other necessary administrative tasks. The case will then be forwarded to the office of the Deputy Vice Chairmen. The number of cases forwarded to the office of the Deputy Vice Chairmen each week will be noted on the Director's weekly Activity Report.

4. ACTION BY DEPUTY VICE CHAIRMAN

One of the Deputy Vice Chairmen will review the representative's request for an IME opinion. If the request is appropriate, the Deputy Vice Chairman will ensure that the necessary correspondence and Diary Slip (VA Form 21-693) are prepared. (See MBVA-1, subparagraphs 7.23e(1) and (2).) When these documents are completed, the case will be routed in accordance with the provisions of MBVA-1, part II, paragraph 7.23f. If the Deputy Vice Chairman does not feel that a request for an IME opinion is appropriate, he or she will note on the bottom of the representative's memorandum that the request has been considered and forward the case to a Section of the Board for regular appellate review.

5. ACTION BY EXECUTIVE ASSISTANT TO THE CHAIRMAN

During the course of reviewing an IME opinion for adequacy (see MBVA-1, subparagraph 7.23i(1)), the Executive Assistant to the Chairman will determine whether or not the case has been assigned to a Section of the Board. If it has not, the Executive Assistant will obtain such an assignment from the office of the Deputy Vice Chairmen and ensure that the assignment is properly noted.

6. ACTION BY BOARD SECTION

Cases in which a representative has requested an IME opinion under this procedure will be processed in the normal way. (See MBVA-1, part II, paragraph 7.23.) The fact that a Deputy Vice Chairman has not approved a representative's request for an IME opinion will not preclude Board Members from obtaining such an opinion if they feel that an IME opinion is appropriate.

7. RESCISSIONS

a. Chairman's Memorandum No. 01-87-35 dated May 29, 1987, subject: IME Requests by Service Organizations, is hereby rescinded in its entirety.

b. This memorandum is automatically rescinded December 31, 1988.

Kenneth E Eaton

KENNETH E. EATON
Chairman

DISTRIBUTION: COE (FOR BVA USE ONLY)
Chief, Paperwork Management and Regulations Service (731)

Attached are copies of pages from M1-1, Field Appellate Procedures, and a numbered memorandum on procedures for Travel Board hearings. Please note that field offices are notified six months in advance of a scheduled visit by a traveling Section, and the directors of the regional offices are instructed to notify promptly all interested individuals, including service organization representatives. While the Board is concerned with having a full docket of travel board hearings scheduled so as to accomodate as many appellants as possible, in some instances, this has not been the case, perhaps due on occasion to late cancellations.

8.11 COPIES OF THE TRANSCRIPT

Generally, a copy of the hearing transcript may be furnished to the claimant or his/her representative upon request. When the claimant requests a copy of the transcript and he/she was not present during all or part of the hearing, consideration should be given as to whether disclosure of testimony presented during that portion of the hearing would be injurious to the mental or physical health of the claimant. While disclosure is necessary under VA Regulation 577(A), it may be advisable to show the material to the person through a third party or by some other special procedure as required by VA Regulation 579(C).

SECTION II. HEARINGS BY TRAVEL SECTIONS OF THE BOARD OF VETERANS APPEALS

8.12 PURPOSE OF TRAVEL SECTION VISITS

Visits by Travel Sections are designed for the benefit of appellants. The purpose of these visits is to afford as many claimants and representatives as possible an opportunity to personally appear before a Travel Section of the Board, utilizing the maximum time available for hearings. These visits help all concerned gain a better understanding of local and appellate problems, and afford an opportunity for appellants and representatives to personally appear before the Section which will decide the appeal, without incurring the expense of appearing in Washington, D.C. The Travel Section conducts hearings on all issues that come under the jurisdiction of the Board of Veterans Appeals.

8.13 ADVANCE PREPARATION OF TRAVEL SECTION VISITS

Arrangements for Travel Section visits should be made well in advance of the field office visit. The notice of such a visit should be coordinated with all field office officials authorized to certify appeals. This will assure a cross section of docketing of all issues appealable to the Board. The service organization representative should be given the opportunity to carefully select his/her case in advance. The record should be checked for adequacy and completeness. The personal appearance of the claimant before a Section of the Board of Veterans Appeals is one of the more significant aspects of a Travel Section visit and the case should be thoroughly reviewed and prepared by the representative. Adequate time should be allotted for each hearing to permit the presentation of the appeal to the satisfaction of the claimant and representative.

8.14 ARRANGEMENTS FOR VISITS

[Visits to a field office are scheduled at 12-month or 24-month intervals, the frequency depending on past experience and the projected appeals workload. For reasons of budgeting and planning, tentative selection of an office to be visited is generally made about 1 year in advance. The monthly reports of appeals pending certification to the BVA are utilized in determining the duration of each visit. A stay of less than 2 full days may not justify the cost of travel and will not ordinarily be scheduled. All time allotted to a field office for hearings should be used; if the number of hearings would take less than 2 full days, the visit may be postponed.] At least [60] days in advance of the scheduled arrival of the Travel Section, the field office should notify the Board of Veterans Appeals of any recommended adjustment in the schedule, and the basis for the recommendation. Since adjustment in one office usually affects the schedule in the other offices involved in the particular itinerary, such recommendations should be made only after close examination of all local factors and the determination is made that all plans and required planning actions have been properly carried out, but despite that, the time allotted is clearly inadequate or excessive.

8.15 NOTICE OF SCHEDULED TRAVEL SECTION VISITS Ju 6 C. [illegible] 1977

Field offices are notified 6 months in advance of a scheduled visit of a Travel Section. [Copies of VA Form 1-3455, Hearing Section Docket Sheet, will be enclosed with this notice.] When this is received, Directors should make distribution of the notice to all officials who certify appeals, commence any preliminary planning and promptly notify service organization representatives and others who may be interested. It is suggested that this be done in writing so that a record of advance notice is made. Generally, the normal processing of appeals continues.

During the 6-month interval, however, field offices will honor requests from claimants or their representatives for delay of transfer of the records to the Board for the purpose of personal appearance before the Travel Section. [Sixty days before the Travel Section is to arrive, the field office must prepare a tentative hearing docket and notify the BVA of the number of hearings scheduled. When this information has been received from all offices on the tentative itinerary, it will be made up in final form. This may differ from the tentative schedule in the length of stay in accordance with the number of hearings scheduled. If insufficient hearings are scheduled at a particular office, arrangements for the hearings may be made at another VA facility visited by the Travel Section. All such arrangements should be coordinated with the appellants and the staff of the VA facility. Approximately 45 days before the scheduled visit the BVA will furnish additional materials and notify the field office of the dates and names of the Board Members who will comprise the Travel Section. The field office will then complete the hearing schedule, notify service organization representatives and complete any other indicated planning.]

8.16 SCHEDULING HEARINGS

Hearings commence 1½ hours after opening of business on the first day and 1 hour after opening of business on successive days. This period is utilized by Members of the Travel Section to review the cases and prepare for the hearings. On the last day of the visit, no hearings should be scheduled to start less than 2 hours before closing time. Judgment will be exercised to assure that the time allotted for each hearing will be in accordance with the complexity of the case, with particular consideration given to allotment of a longer period in any case where it is known in advance that witnesses are to appear and give testimony which will probably require a longer time. This avoids lengthy waiting periods for representatives and claimants scheduled to appear later. No more than six hearings should be scheduled for any 1 day.

8.17 GUIDELINES FOR PLACING CASES ON HEARING DOCKET

a. **General.** Service organization representatives in field offices should be given some preference and selectivity in scheduling hearings before the Travel Section. At the same time, appellants who are represented by private attorneys or legal aid offices or who are unrepresented should not be overlooked, particularly those who specifically request a hearing before a Travel Section or those with pending appeals where the Adjudication Officer or comparable official feels some good purpose would be served by a personal appearance. These guidelines are intended as suggestions, with sufficient flexibility for exercise of judgment based on the situation in field offices at the time. What is desired is cooperative planning that will result in maximum utilization of the time available during the Travel Section visit.

b. **Contact With Representatives.** When the ["6-month] notice" is received, service organization representatives should be asked to identify as soon as possible the cases they wish scheduled for hearings. This will allow time, if individual cases so identified are still in the "Notice of Disagreement" stage, to expedite the release of a Statement of the Case and any other subsequent action so the case can be ready for hearing when the Travel Section arrives in a field office. This does not preclude adding other cases to the docket identified any time before the Section arrives.

c. **Review of Pending Appealed Cases.** The pending appealed cases should be reviewed to identify those cases, represented or unrepresented, in which personal hearings have been requested and which can be processed to the hearing stage by the time of the Travel Section visit. From this group, the remaining hearing docket time should be filled.

d. **Uncertified Cases.** As a general rule, the cases heard by the Travel Section should be those which have been certified or are ready for certification at the time of the Travel Section visit. It is realized that procedures under Public Law 87-666 (38 U.S.C. 4005) may make it difficult to predict in advance whether a case will be ready for certification. If a case has been scheduled for hearing in anticipation that all preliminary actions will be completed, the Travel Section will not object to hearing the case even though it is not technically ready for actual certification, provided the appellant has been furnished a Statement of the Case and the appellant or his/her representative desires a hearing before the Travel Section. No hearing before the Travel Section should be scheduled unless a Statement of the Case is furnished before the hearing, except in an individual case situation involving unusual circumstances which dictate the advisability of permitting a personal appearance before the Travel Section while it is in the office concerned.

[e. Reconsideration. A hearing requested to show error in association with a reconsideration of a BVA decision under VA regulations may properly be placed on the hearing docket.]

8.18 PREPARATION OF DOCKET

A supply of VA Form 1-3455, Hearing Section Docket Sheet, is furnished the field office scheduled for hearings with the ["6-month] notice" from the Board of Veterans Appeals. The docket should be prepared in triplicate. The entry for the block entitled "Day and Date" will be the day and date the cases will be heard and the name and address of the field office. The field office will complete the first three columns entitled "Set Time," "Veteran's Name," and "File No." The remaining columns are for the use of the Travel Section.

8.19 LETTERS OF NOTIFICATION TO APPELLANTS

Representatives might wish to have appellants report to their offices in advance of the hearing for discussion of the case. This should be discussed with representatives and the letters of notification should contain mutually agreeable reporting instructions for the appellant. Unrepresented claimants should be instructed to report to the secretary of the Travel Section at least 15 minutes prior to the time set for the hearing. A sufficient number of VA Form 1-4296, "Your Personal Hearing – Board of Veterans Appeals," will be furnished the field office for use in conjunction with the letters of notification.

8.20 REPORT TO BOARD OF VETERANS APPEALS OF HEARINGS SCHEDULED

[Sixty days] prior to arrival of a Travel Section, the field office should advise the Chairman, Board of Veterans Appeals (01), as to the contemplated number of cases which will be ready for hearing presentation to the Travel Section. This information assists the Chairman in finalizing arrangements for the visit.

8.21 AVAILABILITY OF ALL PERTINENT RECORDS FOR REVIEW BY TRAVEL SECTION

All cases scheduled for a hearing should have material pertinent to the appeal associated with the claims folder, i.e., outpatient medical or dental treatment folders, vocational rehabilitation and education folders, insurance folders, loan guaranty folders, etc., for review by Members of the Travel Section and for use in conducting the hearing.

8.22 CONDUCT OF HEARINGS

This paragraph is intended for the information of field offices and service organization personnel concerned, only for the purpose of providing a general idea as to how the Travel Section will conduct hearings.

a. General Procedures. Hearings are conducted under the Rules of Practice, Board of Veterans Appeals, published in the 9900 series of the VA regulations and in VA Pamphlet 1-1. Argument and testimony introduced at the hearing will be recorded and a complete transcript made for inclusion in the claims folder. The following procedure will generally be applicable in the conduct of the hearings:

(1) The presiding Member of the Travel Section will introduce the parties before commencing the formal hearing.

(2) The parties will be informed of the nature and purpose of the hearing; that is, its nonadversary character and the opportunity for the claimant and witnesses to tell their story in their own words.

(3) The presiding Member will administer the oath to all who are to give testimony.

(4) If the claimant is represented, the representative is given an opportunity for his/her opening remarks as to what he/she intends to show through testimony and evidence.

(5) The claimant and his/her witnesses are given an opportunity to tell their story in their own words.

(6) The representative is given full opportunity to question the claimant and the witnesses to assure completeness of the testimony.

(7) Members of the Travel Section will ask questions to assure completeness of the record and clarification of the issues.

(8) All parties to the hearing are invited to make any pertinent closing statement.

b. **Physical Examination at the Hearing.** Sometimes the Travel Section is asked to physically examine a claimant at the hearing. The Members of a Travel Section do not conduct physical examinations. If the appellant so desires, however, they may observe his/her disability after completion of the hearing.

8.23 ASSISTANCE FOR THE TRAVEL SECTION

a. **Secretarial and Transcription Monitoring Assistance.** An employee should be selected to act as secretary to the Travel Section. Transcription equipment consisting of two cassette tape recorders with microphone will be brought by the Travel Section of the Board. Personnel should be selected to monitor this equipment during the course of the hearing. The visiting Board Members will instruct the transcription monitor in the operation of the equipment. The tapes of the hearings will not be transcribed in the field office but will be sent to the Transcription Unit in Wilkes-Barre, Pennsylvania. Instructions for the guidance of the hearing secretary will be forwarded to the field office prior to arrival of the Travel Section.

8.24 EFFECT ON NORMAL OPERATIONS IN FIELD OFFICE

Arrangements for a Travel Section of the Board are designed to have as minimum [illegible] possible upon normal operations in the field office. Accordingly, Directors should notify the appropriate [illegible] Field Directors, DVB, prior to the visit, of any expected temporary personnel or monetary needs occasioned by the hearing activity which cannot be taken care of locally. This will then be coordinated between the Board of Veterans Appeals and the Department of Veterans Benefits.

8.25 DUPLICATION OF HEARINGS

Another hearing before a Travel Section is not normally contemplated following a hearing on the same appeal before personnel of a field office acting as a hearing agency for the Board of Veterans Appeals. Generally, a claimant or his/her representative will make an appearance before one or the other, or before a Section of the Board in Washington, D.C. Adjudication Officers or officials at comparable level in field offices deciding claims for benefits should be alert from the time of the "6-month notice" to assure a choice in order to avoid duplication of effort.

Office of the Chairman
Board of Veterans Appeals
Washington, D.C. 20420

March 14, 1988

MEMORANDUM
NO. 01-88-26

SUBJ: Procedures and Instructions for Traveling Board Sections

1. GENERAL

Instructions and suggestions contained in this paper are, in large part, products of experience of Traveling Sections. They are intended as guides and are flexible--to be modified in practice as circumstances warrant.

2. PRELIMINARY ARRANGEMENTS

a. Six months prior to your trip, field stations and service organizations received notification of your visit.

b. About a month before the visit, Adjudication Officers received instructions and a request for clerical assistance. At the same time we sent supplies and forms for your hearings.

3. PROCEDURES AT FIELD STATIONS

a. All Members of the Traveling Section should visit the Director upon arrival and prior to leaving the station. Procedures and support needed should be discussed with the Adjudication Officer. The employee detailed to act as secretary to the Section should be thoroughly instructed as to methods of recording hearings.

b. The Chief Member should alert the regional office that, because of the desire to have Travel Board cases handled expeditiously, we maintain a 30-day followup on them--measured from date of hearing.

c. Entertainment or visits outside official hours with claimants or representatives might be the subject of criticism, and, if possible, should be tactfully avoided. Social activities with field station people, if any, should include all members of the Traveling Section.

d. Avoid discussing controversial cases with regional office personnel or service representatives. The Board's position may be explained if it serves to clarify problem areas.

e. Traveling Sections generally do not prepare decisions in field offices. Travel Board decisions, whether written in the field or in Washington, bear the notation that a hearing was held before the Board of Veterans Appeals "Sitting at __________."

f. Hearings are scheduled to begin 1 and 1/2-hours after opening of business on the first day of your visit and 1 hour after opening of business on subsequent days. This permits review of files prior to hearings. The Chief Member, or designate, will make necessary docket entries, supervise preparation of remands (if any), and forward reports to the Chairman, Board of Veterans Appeals.

g. Generally we schedule six hearings per day (see VA Manual M1-1, Chapter 8, Section II). No hearings should start less than 2 hours before daily close of business or 3 hours before the Traveling Section's plane departure on the last day of the visit.

h. Most Sections find it desirable to proceed informally for a few moments to place the claimant at ease. This, as well as an informal ending of the hearing, may be off the record. Since Sections come into contact with claimants from many different regions of the country, consider this in planning your approach. Avoid an atmosphere of too much formality or too much informality.

i. The Board no longer routinely furnishes a copy of the hearing transcript to the claimant or representative. If a claimant or representative specifically requests a hearing transcript, note this on the Hearing Section Docket Sheet (VA Form 1-3455).

j. Hearings in non-medical cases may be conducted by the legal members of the Traveling Section. In this case, explain to the appellant that since the issue does not involve a medical question, the physician will not sit at the hearing. Tell the appellant that a third signatory on the decision will be a legal member. He or she will review the records and testimony given at the hearing before reaching a decision. The authority for this procedure is included in Rule 60(c) of the Rules of Practice.

k. Traveling Sections are allowed 1 hour for lunch. Otherwise, they maintain office hours of the station visited.

l. To maintain proper decorum and a judicial atmosphere, the Board of Veterans Appeals strives to avoid publicity. If a case generates interest to news media, take care to protect privacy and ensure due process considerations for appellants and to maintain proper dignity for Board actions. Rule 69 of the Rules of Practice permits appellants to record, film, videotape or televise hearings provided there is a proper consent of record. If you decide a press release is appropriate or there is any difficulty with publicity, contact the Chairman, BVA (FTS (8) 373-3001) for guidance.

4. JURISDICTION

a. Traveling Sections of the Board of Veterans Appeals extend the Board's coverage throughout the Nation by conducting personal hearings for appellants and their representatives. With few exceptions, a Traveling Section will take appellate action on any case properly before it, regardless of the nature of the appeal. Under the provisions of Rule 60(c) of the Rules of Practice, issues involving radiation exposure, agent orange exposure or asbestosis will be heard by the Traveling Section of the Board but the decision will be signed by Board Members specializing in those issues. The appellant must be informed of this procedure. Apart from these exceptions,

(1) A Traveling Section will hear and decide cases remanded previously by a different Board Section.

(2) In hearings to show error in a prior BVA decision, inform the appellant and representative at the beginning of the hearing that, while the Traveling Section will conduct the hearing, the appeal normally will be decided by two Sections of the Board--the Traveling Section and the Board Section that entered the original decision.

(3) If any member of the Traveling Section participated previously in an administrative appeal, that member will not be party to another decision in the same matter. As in paragraph j supra, the Chairman will assign additional Member(s) in Washington, D.C.

b. Do not deny a hearing to any claimant or accredited representative when a Notice of Disagreement (NOD) has been filed, regardless of whether or not a Statement of the Case (SOC) has been furnished or whether further development is being taken by the field office. Once a NOD has been filed, the Board has jurisdiction of the issue. However, inform the appellant that the field office will again review the records, including testimony presented at the hearing. After its review, the field office will notify her or him of its findings as well as procedures for filing a substantive appeal in the event of an adverse determination. Remind officials in the field office that a SOC must be furnished, if appropriate, and a substantive appeal must be received and the appeal certified prior to forwarding the case to the Board of Veterans Appeals in Washington, D.C.

c. The Traveling Section should not deny a hearing because of failure of the agency of original jurisdiction (AOJ) to adjudicate an issue. After the hearing, refer such a case to field office officials for rating action.

d. When additional evidence is discovered or further development or o
action is deemed necessary, the Traveling Section may prepare a remand at the
office. A Rating Board should consider new and material evidence received a
hearing, unless the appellant or representative specifically waives his or her rig
such consideration by the field office. See Rules 72 to 74 of the Rules of Practice

e. If the Traveling Section prepares a remand at the field office, the Chief Member should ask the field office to transcribe the hearing. The original transcript should be placed in the veteran's records, and a copy should be forwarded to the BVA. The Chief Member includes appropriate notations on the Hearing Section Docket Sheet.

f. In the event of illness or temporary incapacitation of a Member, notify the Vice Chairman, BVA (FTS (8) 373-2222) as soon as possible. Remaining Members will continue to conduct hearings.

g. Ensure that records properly reflect that representatives appearing at hearings are officially recognized by the Veterans Administration.

5. TRAVEL BOARD RECORDS

a. Hearing Worksheet (VA Form 1-4283) is for internal use of the Board of Veterans Appeals. This form is a means for Section Members to record impressions obtained from their reviews of claims folders and their observations of appellants and witnesses during hearings. These worksheets provide guidance to attorneys preparing tentative decisions. Completed copies of these forms are not to be given to appellants, representatives, or field station officials.

b. Prior to your arrival, the Board sent copies of Hearing Section Docket Sheets (VA Form 1-3455) to each office on your trip. There should be a docket for each day of your visit. Each should list the times of scheduled hearings, names of individuals appearing, and representatives, if any. At the termination of the Traveling Section's visit, the Chief Member will mail original VA Form 1-3455 to the BVA, along with VA Form 1-4283. Arrange with local officials to return other materials and unused supplies to the BVA.

c. The Chief Member will request that Travel Board cases be transferred to the BVA as quickly as possible--consistent with full development of the appeal. Affix the blue 5 x 8 flash card bearing the following notation on each claims folder:

SPECIAL
FORWARD TO
BOARD OF VETERANS APPEALS
CENTRAL OFFICE
WASHINGTON, D.C. 20420
TRAVEL BOARD CASE

This card will remain on the claims folder until the appeal is decided and the records are returned to the AOJ. THE TRAVEL BOARD CHIEF MEMBER MUST INSTRUCT THE REGIONAL OFFICE CLERICAL STAFF TO PROMINENTLY AFFIX THIS BLUE FLASH CARD TO ALL TRAVEL BOARD CASES BEFORE THEY ARE SENT TO THE BOARD.

d. The Hearing Docket Sheets (VA Form 1-3455) must be complete and must clearly identify the members of the hearing panel. The individual who chaired the particular hearing should be listed with the title "Presiding Member" in parenthesis following his or her name. Statistics Section tracks each Travel Board hearing with the particular Presiding Member. Their source of information for this data is the Hearing Docket Sheet.

6. PROCEDURES AT THE BOARD OF VETERANS APPEALS

a. It will be the Senior Attorney's responsibility to prepare a tentative decision and refer the case and the decision to the Chief Member of the Travel Board panel within 7 working days. (See MBVA-1, par. 6.03d)

b. All Travel Board cases will be controlled by a 30-day due date for a completed decision. The Travel Board Secretary will establish the due date at the time the case is assigned to a Senior Attorney. The due date will be shown on the blue card attached to the claims folder. An extension of the 30-day time period to complete the case will only be made on specific approval of the Chief Member of the Travel Board panel. This will be approved by the Chief Member before contacting the Field Representative's office.

7. RESCISSIONS

a. Chairman's Memorandum No. 01-87-23 dated April 6, 1987, subject Procedures and Instructions for Traveling Board Sections, is hereby rescinded.

MEMORANDUM NO. 01-88-26

b. This memorandum is automatically rescinded August 31, 1988.

Kenneth E Eaton

KENNETH E. EATON
Chairman

DISTRIBUTION: COE (FOR BVA USE ONLY)
Chief, Paperwork Management and Regulations Service (731)

STATEMENT OF
KENNETH R. FEINBERG
SPECIAL MASTER IN THE
AGENT ORANGE LITIGATION
BEFORE
SENATE VETERANS AFFAIRS COMMITTEE
JUNE 9, 1988

Mr. Chairman, members of the Committee, thank you for asking me to appear before the Committee today. As you know, I am the court-appointed Special Master in the Agent Orange Product Liability Litigation. I assumed this role in 1984, when Judge Jack B. Weinstein appointed me to assist in settling the Agent Orange case and thereafter to assist the Court in developing and implementing a plan for distributing the assets of the Settlement Fund. I am pleased to be here today to express my support for Senator Mitchell's bill, S. 1805, which would protect low-income, totally disabled Vietnam veterans who receive compensation from the Agent Orange Settlement Fund from having their governmental veterans' benefits reduced. Senator Mitchell is to be commended for introducing this legislation, which will resolve a thorny dilemma facing members of the plaintiff class entitled to benefit from the settlement.

My goal, Mr. Chairman, is to describe in brief the Court's plan to distribute the assets of the Agent Orange Settle-

MENT FUND AND TO EXPLAIN WHY S. 1805 IS APPROPRIATE LEGISLATION TO PROTECT THE BENEFICIARIES OF THE SETTLEMENT. I HAVE SUBMITTED A WRITTEN STATEMENT AND ASK THAT IT BE INCLUDED IN THE RECORD.

THREE YEARS AGO, THE COURT ADOPTED A DISTRIBUTION PLAN THAT, WITH MINOR MODIFICATIONS, SURVIVES TO THIS DAY. THIS DISTRIBUTION PLAN WAS DEVELOPED WITH THE ADVICE AND ASSISTANCE OF A COURT-APPOINTED ADVISORY GROUP OF VIETNAM VETERANS, AND IN RESPONSE TO COMMENTS RECEIVED FROM HUNDREDS OF VIETNAM VETERANS AND THEIR FAMILIES AROUND THE COUNTRY. THE DISTRIBUTION PLAN HAS TWO MAJOR ELEMENTS: (1) THE AGENT ORANGE VETERAN PAYMENT PROGRAM, WHICH WILL PROVIDE CASH PAYMENTS TO NEEDY VIETNAM VETERANS AND THE SURVIVORS OF DECEASED VIETNAM VETERANS THROUGH THE END OF 1994; AND (2) THE AGENT ORANGE ASSISTANCE FUND, WHICH WILL OPERATE OVER A 7-10 YEAR PERIOD AND PROVIDE FUNDS FOR SOCIAL SERVICES TO ASSIST MEMBERS OF THE CLASS. THE COURT IS PREPARED TO IMPLEMENT THIS DISTRIBUTION PLAN IMMEDIATELY UPON RESOLUTION OF APPEALS STILL PENDING IN THE SUPREME COURT.

MY TESTIMONY TODAY FOCUSES ON THE COMPENSATION MADE AVAILABLE TO VIETNAM VETERANS AND THEIR SURVIVORS THROUGH THE PAYMENT PROGRAM. THE PAYMENT PROGRAM IS BASED ON THE ASSUMPTION THAT THE SETTLEMENT FUND COULD NOT FEASIBLY PROVIDE COMPENSATION FOR ALL PERSONAL INJURIES CAUSED BY AGENT ORANGE BECAUSE OF THE DIFFICULTY ASSOCIATED WITH ATTEMPTING TO PROVE THAT A PARTICULAR INDIVIDUAL'S AILMENT WAS IN FACT CAUSED BY EXPOSURE TO AGENT ORANGE. THEREFORE, IN DEVELOPING THE PAYMENT PROGRAM, THE COURT

CONCLUDED THAT THE SETTLEMENT FUND SHOULD NOT BE DISTRIBUTED ACCORDING TO TRADITIONAL TORT GUIDELINES BUT RATHER SHOULD BE USED TO PROVIDE FINANCIAL ASSISTANCE AND RELIEF TO THOSE MEMBERS OF THE PLAINTIFF CLASS WHO ARE IN PARTICULARLY DIFFICULT CIRCUMSTANCES. IN ACCORDANCE WITH THIS PRINCIPLE, THE COURT DECIDED THAT COMPENSATION FROM THE PAYMENT PROGRAM WILL BE AVAILABLE TO VIETNAM VETERANS WHO SUFFER FROM A LONG-TERM TOTAL DISABILITY AND TO THE SURVIVORS OF DECEASED VIETNAM VETERANS. THE ONLY ADDITIONAL ELIGIBILITY CRITERIA ARE THAT THE VETERAN WAS EXPOSED TO AGENT ORANGE WHILE IN VIETNAM AND THAT THE DISABILITY OR DEATH WAS NOT CAUSED BY A TRAUMATIC INJURY.

AT THIS TIME, IT IS IMPOSSIBLE TO SAY WITH CERTAINTY HOW MANY VIETNAM VETERANS OR SURVIVORS WILL RECEIVE COMPENSATION FROM THE PAYMENT PROGRAM. OVER 250,000 INDIVIDUALS HAVE FILED PRELIMINARY CLAIM FORMS. WE EXPECT ADDITIONAL CLAIMS WHEN THE PAYMENT PROGRAM IS FORMALLY ANNOUNCED. OUR TENTATIVE ESTIMATES SUGGEST THAT AS MANY AS 60,000 VIETNAM VETERANS AND SURVIVORS WILL MEET THE ELIGIBILITY CRITERIA AND RECEIVE COMPENSATION FROM THE PAYMENT PROGRAM.

THE AMOUNT OF COMPENSATION THAT EACH INDIVIDUAL WILL RECEIVE FROM THE PAYMENT PROGRAM WILL DEPEND ON A VARIETY OF FACTORS INCLUDING THE NUMBER OF ELIGIBLE CLAIMANTS THAT SEEK COMPENSATION. EARLY PROJECTIONS INDICATE THAT DISABILITY BENEFITS WILL AVERAGE APPROXIMATELY $5,700, WITH A MAXIMUM POSSIBLE BENEFIT OF $12,800 PAID OUT ANNUALLY OVER THE SEVEN-YEAR LIFE OF

THE PAYMENT PROGRAM. THUS, A TOTALLY DISABLED VETERAN WHO IS ENTITLED TO THE MAXIMUM LEVEL OF COMPENSATION MIGHT RECEIVE APPROXIMATELY $1,800 PER YEAR. SURVIVORS BENEFITS WILL BE PAID IN ONE LUMP SUM AND WILL AVERAGE ABOUT $1,800, WITH A MAXIMUM PAYMENT OF $3,400. AS YOU CAN SEE, MR. CHAIRMAN, DESPITE THE RELATIVELY LARGE SIZE OF THE SETTLEMENT FUND, BECAUSE OF THE ENORMOUS NUMBER OF CLASS MEMBERS THE PAYMENTS TO EACH INDIVIDUAL WILL BE QUITE MODEST.

THE PROBLEM THAT HAS ARISEN, MR. CHAIRMAN, IS THAT A NUMBER OF THE INDIVIDUALS ENTITLED TO RECEIVE A DISTRIBUTION FROM THE PAYMENT PROGRAM MAY ALSO BE RECIPIENTS OF CERTAIN GOVERNMENTAL BENEFITS INCLUDING VA BENEFITS. IT IS MY UNDERSTANDING THAT THE VETERANS ADMINISTRATION MIGHT CONCLUDE THAT PAYMENTS FROM THE PAYMENT PROGRAM SHOULD BE CONSIDERED INCOME IN DETERMINING THE AMOUNT OF, OR EVEN ELIGIBILITY FOR, CERTAIN VETERANS' PENSION PROGRAMS AND HEALTH CARE BENEFITS. UNDER THE VA'S IMPROVED PENSION PROGRAM, FOR EXAMPLE, THE PENSION PAID TO THE VETERAN MAY BE REDUCED OR "OFFSET" BY ONE DOLLAR FOR EVERY DOLLAR OF "INCOME" RECEIVED BY THAT VETERAN. THE VA REGULATIONS DEFINE PERSONAL INJURY DAMAGES AS INCOME. IF THE VA TREATS PAYMENTS FROM THE SETTLEMENT FUND AS PERSONAL INJURY DAMAGES, VETERANS WHO ARE RECEIVING IMPROVED PENSIONS COULD HAVE THEIR PENSIONS REDUCED DOLLAR-FOR-DOLLAR BY THE AMOUNT THEY RECEIVE FROM THE PAYMENT PROGRAM. THIS OFFSET WOULD NEGATE THE BENEFIT OF THE SETTLEMENT FOR SUCH INDIVIDUALS. RATHER THAN BENEFITTING THE VIETNAM veterans, the Settlement Fund would flow into the coffers of the VA.

In short, Mr. Chairman, we face a situation in which Vietnam veterans who have little or no income and who suffer from a disabling condition that entitles them to receive VA pension or certain health care may lose these much-needed benefits if they receive a payment from the Settlement Fund. This would create a Hobson's choice for the most deserving and needy Vietnam veterans in the plaintiff class and would frustrate the intent of the Payment Program. S. 1805 would prevent this unjust and unwarranted result.

Let me take a minute, Mr. Chairman, to address several concerns that may arise about S. 1805. First, providing that the VA should not count payments from the Agent Orange Settlement Fund as income is fully consistent with the purpose of the VA's programs. As I described earlier, cash payments from the Settlement Fund are intended to benefit the most needy class members. Similarly, the VA pension and health care programs at issue are intended to assist needy veterans. To effectuate this goal, the statute governing pension programs provides that payments made by certain assistance organizations to low-income veterans are not to be counted as income in computing the veteran's eligibility for pension payments. The rationale for this rule, of course, is that needy individuals should not be forced to forego VA benefits merely because they are also eligible to participate in other

ASSISTANCE PROGRAMS. TO PROVIDE THAT THE VA SHOULD NOT COUNT AS INCOME THE MODEST PAYMENTS FROM THE AGENT ORANGE SETTLEMENT FUND WOULD BE FULLY CONSISTENT WITH THIS RULE. S. 1805 WOULD NOT UNDERMINE OR ERODE THE INTEGRITY OF THESE VA PROGRAMS.

SECOND, S. 1805 DOES NOT CREATE AN ILL-ADVISED PRECEDENT THAT WILL BE EXPLOITED IN OTHER CIRCUMSTANCES. THE AGENT ORANGE SETTLEMENT AND DISTRIBUTION PLAN PRESENT A TRULY UNIQUE SITUATION. IT IS EXTREMELY UNLIKELY THAT A CASE SUCH AS AGENT ORANGE, WHICH RESULTED IN A DISTRIBUTION PLAN BASED ON NEED RATHER THAN A TRADITIONAL TORT THEORY OF INJURY, WILL ARISE AGAIN.

THIRD, S. 1805 WOULD NOT GIVE RECIPIENTS A WINDFALL. THE COMPENSATION AVAILABLE FROM THE PAYMENT PROGRAM IS EXTREMELY LIMITED AND IT IS DIRECTED TO A NEEDY GROUP OF INDIVIDUALS -- LONG-TERM TOTALLY DISABLED VIETNAM VETERANS AND THE SURVIVORS OF VIETNAM VETERANS. NO SINGLE CLAIMANT WILL RECEIVE SUCH A LARGE AWARD THAT HIS OR HER PARTICIPATION IN THE VA PENSION OR HEALTH CARE PROGRAMS WOULD BECOME INAPPROPRIATE.

FINALLY, LEGISLATION PROVIDING THAT THE VA CANNOT COUNT COMPENSATION FROM THE PAYMENT PROGRAM AS INCOME SHOULD NOT TRIGGER MAJOR BUDGETARY CONCERNS. WHILE THE PRECISE AMOUNT OF COMPENSATION AN INDIVIDUAL WILL RECEIVE CANNOT BE DETERMINED AT THIS TIME, ALL OF THE PAYMENTS WILL BE MODEST. MOREOVER, THE NUMBER OF VETERANS WHO MIGHT BE AFFECTED BY AN OFFSET IS RELATIVELY SMALL IN COMPARISON TO THE VAST NUMBERS OF VETERANS THAT RECEIVE

VA pensions. The amount of money that the VA could recoup through offsets is a pittance, particularly in the context of the VA's overall budget. That money will, however, be very important for individual Vietnam veterans who are eligible for compensation from the Payment Program. Enactment of S. 1805 could make a very real difference in the lives of these needy Vietnam veterans. Quite simply, failure to enact the bill could impose a tremendous hardship on some of this nation's veterans -- a result the Vietnam veteran community would have great difficulty understanding -- while providing little or no benefit to the Veterans Administration.

Mr. Chairman, as you know, the Agent Orange litigation has been a lightening rod and a rallying point for the Vietnam veteran community. Now, four years after the case was settled, Vietnam veterans are finally receiving their due from society. At long last, the proceeds of the Agent Orange settlement are about to be distributed. The Agent Orange case, and much of the bitterness it engendered, are about to be put behind us. This healing process is threatened, however, by the possibility that the Veterans Administration will attempt to recoup through offsets the modest sums that Vietnam veterans will receive from the settlement. Such an action would reopen old wounds and reignite the anger of the class. Moreover, a profound injustice would be done to individuals who risked their lives in Vietnam. Congress can avert this eventuality by passing S. 1805. I urge the Committee to give Senator Mitchell's bill speedy and favorable attention. I thank the Chairman and the Committee for the opportunity to make this presentation and I will be happy to answer any questions.

Realistic Treatment for Substance Abuse
Executive Director Marc L. Rosenbaum

June 2, 1988

To Whom It May Concern,

As the Chief Executive Officer of the Our Family Corporation, a large non-profit chemical dependency treatment center located in Napa, CA., I have had the opportunity to administer our side of the pilot contract with the Veterans Administration. For the last eight years we have treated veterans with chemical dependency problems on contract with the Veterans Administration Hospital in Martinez, CA.. The administrator for the Veterans Administration side of the contract has been Mr. Ira Brown. Because of our years of experience in working with over 300 veterans referred to us for inpatient treatment I feel qualified to speak to the strengths and weaknesses of the pilot program as we have experienced it.

To give you some background I have worked continuously for the last nineteen years in the field of chemical dependency treatment in many different capacities. For the last six years I have been director of Our Family, which is a chemical dependency

707
252-1366
P.O. Box 4170
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recovery center with a therapeutic community orientation providing eighty resident treatment beds in four different facilities. The average length of stay is approximately nine months. We are obviously a long term program designed to treat chronic abusers with a history of failure in other types of programs. Interestingly enough the majority of our beds, fifty are designated for adolescent care. We are known throughout the state as one of the finest providers available for these services.

In regards to the provision of services to veterans through the pilot project that allows for placing of veterans in community based treatment facilities I have a number of observations. First and foremost I think the project has been tremendously affective both clinically and financially. By and large the veterans placed in our program have stayed, responded well to treatment, become leaders in the therapeutic community, and have maintained successful recovery over time. Our figures correspond with those collected by Mr. Ira Brown and indicate that over 60% of the veterans that have participated in our program are either abstinent or report drastically reduced consumption levels six full months after completing inpatient treatment. The vast majority of veterans placed in our program have been Viet Nam era veterans and because of this they have responded especially well to a community based program. The characteristics we have noted that are common among the veterans are as follows;

1. Their chemical dependency problems are horrendous. They are almost without exception suffering from very chronic and extremely significant levels of abuse of both alcohol and other drugs. Their level of abuse and length of time using are perhaps 40% greater than other alcoholics and addicts in our program. They are in general profoundly depressed and see little hope for real recovery. Furthermore, they have a propensity towards paranoia and have an underlying fear that their Viet Nam experience has made them forever different in some painful way. The first and greatest benefit of a contract with a community based treatment facility is that the veterans we have experienced have a need and preference to be integrated in treatment with people who are not veterans. They need the commonness to be their addiction not

their military background. By being in a community based program I feel that they can get a much clearer prospective that their addiction is the source of most of their current problems not their military history.

2. It appears that veterans respond exceptionally well to our highly structured therapeutic community. In our type of program clients are treated from the point of view that they can be and must be active, responsible and aggressive in the pursuit of their recovery. We do not allow them to think of themselves as patients who are out of control and who must be taken care of. This philosophy is pervasive in community based programs.

Because of these reasons I think that it is clinically dictated that veterans in general who have drug and alcohol addictions will respond to treatment substantially better in community based programs.

I would like to take some time to critically review aspects of the pilot project that are problematic and that I recommend be changed as part of a permanent contracting process.

1. In my opinion the biggest issue is the length of stay that is allowed both in veterans hospitals as well as in community based programs. As it currently stands the length of stay that is allowable for community based programs is a maximum of sixty days with a possible (often not approved) thirty day extension. In my opinion this is simply too short. As I've stated earlier Our Family Corporation has an average length of stay of nine months. We have been forced to take a limited number of veterans because in order to successfully treat these veterans we must transfer them at the sixty day point, because of termination of veterans funds, into beds that are subsidized by some other source and there are not many of these beds available. I feel that veterans can be successfully treated in programs with a shorter length of stay than nine months, but certainly in the vast majority of cases we have seen, sixty days is insufficient. Veterans in general and Viet Nam veterans in particular appear to be especially susceptible to severe and chronic chemical dependency issues as I referred

to earlier in this paper. Because of this it takes longer to treat this population. The generalized standards for the detoxification and treatment of chemical dependency referred to as DRG's or Diagnostically Related Groups was based on a optimistic view of the general public and in my opinion is not accurate as applied to veterans. The DRG for the chemical dependency detoxification is approximately five days and for primary treatment is approximately twenty-one days. I think this is wholly inadequate. Why set up a system that can effectively initiate treatment but not allow for it to be completed? My recommendation would be that community based programs be allowed ninety days for treatment with possible extensions for an additional sixty days for a minority of cases with a well established criteria. Furthermore, it appears those participating Veterans Administration Hospitals are having their maximum stay reduced from twenty-eight days to twenty-one days and in some cases even shorter. It is my opinion this doesn't allow adequate time to stabilize, assess and facilitate appropriate placement.

2. It is my understanding that both approval of participating facilities as well as approval of extensions of stay are handled at the national level rather than at the regional or local level. I think this is a mistake. The approval process causes extensive delays and undermines the local veterans hospital's ability to successfully administer and monitor its contracts. Additionally, per diem rates are also handled at the national level where I think it can best be done at the local or regional level.

3. Finally it is unclear to us in the Bay Area why some hospitals such as Martinez Veterans Administration Hospital are participating in the project while others such as Menlo Park, Palo Alto, San Francisco, and Livermore hospitals are not. I hope the end result of your process culminates in a greater number of hospitals participating.

In conclusion Our Family Corporation is extremely honored and proud to be able to assist United States veterans through this innovated and excellent project. We experience a unique and special level of satisfaction when we either hire or successfully treat a Viet Nam era veteran. I strongly encourage you to make this program permanent and to expand and improve it so that more veterans can get well.

Most sincerely,

Marc Rosenbaum

Marc Rosenbaum

FRIENDSHIP HOUSE

1435 S. Hanover Street
Baltimore, Maryland 21230
Phone: (301) 752-2475
752-2476

June 7, 1988

To Whom It May Concern:

Friendship House is a drug-free residential half-way house for the male recovering alcoholics and addicts. Friendship House has been under contract with Veterans Administration Medical Center at Fort Howard since 1982.

Prior to admission, as stated under contract, the counselor of a referring agency such as Fort Howard, is notified as to a pre-admission interview to determine the patients status and need for a half-way house setting. During the interview, the importance of an explanation of the programs' policies and procedures are presented to the patient. He is reassured for the first 60 days that room and board is paid through the Veterans Administration contract, during which time he will utilize all resources available. Resources include support of community services, and Vocational Rehabilitation in collaberation with Veterans Administration sources.

Following admission into the house, the patient and counselor will discuss an individualized treatment plan. The plan will include one-on-one counseling when necessary, group counseling (once per week), a minimum of at least 7 Alcoholics Anonymous and Narcotics Anonymous meetings per week. In the event, when deemed necessary, a resident may be referred to an outside agency to meet special needs not available in-house.

It is further agreed that the resident will receive basic health and personal hygiene maintenance, monitoring of medications, and any other service or supplies that may be necessary to aid in his recovery. This may include follow-up counseling and aftercare through Veterans Administration Medical Center at Fort Howard.

At any time during the contracted 60 day period, a resident leaves the facility for any reason, the Veterans Administration authorities are notified and the contract is terminated.

On the next 60 days, having met the goals of the treatment plan, the resident should be able and capable of training through Vocational Rehabilitation or has established full-time or part-time employment. Also, to have a secure living arrangement and foundation for living a drug free life style.

On the event, the resident is unemployable due to physical or mental handicaps, a request of an additional 30 days through Veterans Administration may be necessary. Otherwise, the resident will agree to apply for Social Service to meet his needs.

Respectfully yours,

Edgar M Bartholomew

Edgar M. Bartholomew
Executive Director

GOLD STAR WIVES
OF AMERICA

Gold Star Wives of America, Inc.

STATEMENT OF

MRS. GERALDINE B. CHITTICK, LEGISLATIVE CHAIRMAN
GOLD STAR WIVES OF AMERICA, INC.

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

CONCERNING LEGISLATIVE PROPOSALS PERTAINING TO
DEPENDENCY AND INDEMNITY COMPENSATION

JUNE 9, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE,

On behalf of the membership of Gold Star Wives of America, I thank you for the invitation to appear before this Committee to present the views of our organization. We welcome this opportunity to express our appreciation of the Committee's high priority placed on the concerns of Compensation recipients, and we appreciate this occasion to review our concerns in the area of Dependency and Indemnity Compensation.

The membership of Gold Star Wives is open to those whose husbands died while on active duty or of disabilities incurred during such service, and the legislative concerns of our organization are restricted by our constitution to those pertaining directly to Gold Star Wives or Gold Star Sons and Daughters. This will explain the absence of a stated position on matters other than those pertaining to DIC.

S. 2011 - The Veterans' Compensation Cost-of-Living Adjustment Act of 1988

Although we recognize the need for fiscal restraint in government spending, we do believe an increase in monthly rates of DIC is necessary to prevent more severe erosion of benefits than is presently occurring for the majority of our membership. Not all essential items are taken into consideration in the computation of the CPI. For instance, spiraling costs of prescription drugs are not truly reflected in CPI figures used to calculate COLA's. In one year, the CPI increased 1.9 percent, while the cost of prescription drugs climbed 8.6 percent. We favor legislation to provide a COLA at least equal to that of Social Security, although we do not believe DIC should necessarily be equated with Social Security.

Gold Star Wives continues to be increasingly distressed as year after year goes by under the current DIC formula set 20 years ago with the growing differential between top and bottom of the 23-rank rate scale. We thank the Chairman for his consideration of the Resolution coming from the 1987 Gold Star Wives National Convention for a one-time flat rate increase in DIC rates and the cost figures provided by the Veterans Administration. H.R. 4423 introduced April 20, 1988 does reflect a proposal based on the appropriated funds being divided equally. We acknowledge the serious drawbacks of such a proposal - and we are disappointed that the figures provided indicate that the great concentration of recipients in the lower rank categories would prevent the proposal from providing the relief anticipated. This would indicate even more forcibly the urgent need for total DIC revision.

Gold Star Wives continues to believe the proposal for formula revision advocated by our organization for the past 10 years merits consideration. That is: An equal base pay on which all COLA's would apply - PLUS a fixed amount based on rank and length of service (and might well include degree of disability and circumstances of death). Such a plan would not be made obsolete by inflation. The Committee is urged to evaluate every possible solution which would provide a just and fair revision of the DIC program.

S. 2267 - To Index Compensation and DIC Rates

In spite of the unfortunate confusion which resulted from the two-month delay in the reflection of the 1988 increase on recipients' payments, we do continue to be opposed to the indexing of Compensation rates. Annual Congressional review of the program would, we believe, encourage more direct consideration of DIC formula revision as well as provide a valuable vehicle for other desired changes in veterans' programs.

We would also urge that proposals be considered which would permit remarriage after age 55 without loss of DIC. Few retired couples are sufficiently affluent to exist on one income, but the lives of a number of elderly could be enriched if such legislation were to be enacted.

Thank you again for the opportunity to appear here this morning. I shall be pleased to address any questions the Committee may have.

Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

E. PHILIP RIGGIN, DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION

and

PHILIP R. WILKERSON, ASSISTANT DIRECTOR
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION

before the

COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE

on

COMPENSATION and COST-OF-LIVING ADJUSTMENTS

JUNE 9, 1988

STATEMENT OF PHILIP R. WILKERSON
ASSISTANT DIRECTOR FOR INFORMATION MANAGEMENT
NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION
THE AMERICAN LEGION
BEFORE THE COMMITTEE ON VETERANS AFFAIRS
UNITED STATES SENATE
JUNE 9, 1988

Mr. Chairman and Members of the Committee:

The American Legion appreciates the opportunity to share with you its views on legislation affecting veterans benefits and the operations of the Veterans Administration to include comment upon certain aspects of the operations of the Board of Veterans Appeals.

S. 1805 proposes to protect nonservice-connected disability and death pension benefits and eligibility determinations for VA medical care based upon income levels by excluding any payments received pursuant to the settlement in the "Agent Orange" Product Liability Litigation.

In May 1984, a settlement was reached in the class action suit filed on behalf of some 16,000 Vietnam veterans and their dependents. The court subsequently approved a distribution plan intended to provide financial assistance to those among the plaintiffs who were in the most difficult circumstances. Under the distribution plan, approximately $150 million of the settlement fund will be allocated to the Agent Orange Veteran Payment Program. The payment program will provide cash awards to certain totally disabled Vietnam veterans and the surviving spouses and children of certain deceased Vietnam veterans.

Veterans who can show exposure to Agent Orange while in service in or near Vietnam from 1961 to 1972 and who are currently suffering from a long-term total disability based upon Social Security rating criteria, which occurred prior to the veteran's 60th birthday and is not caused by trauma, accident, or self-infliction, could receive payments under the settlement.

Spouses or dependent children of deceased veterans who qualify under the above criteria would also receive payments.

Tentatively, veterans could receive a maximum of $12,800 and survivors could receive up to $3,400 under the settlement plan.

Veterans or survivors currently in receipt of nonservice-connected disability or death pension would have their pensions reduced on a dollar-for-dollar basis for any monies received under the Agent Orange settlement, and in some cases, the entire pension could be discontinued because of this modest income.

S. 1805, as mentioned previously, would exclude the payments under this settlement from being counted as income for pension purposes, or as income with respect to the means test criteria for Veterans Administration medical care. The American Legion fully supports the intent of this proposal. However, we would recommend the exclusion from income provision be extended beyond the Veterans Administration programs, to include any needs-based government assistance program.

S. 2011, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1988", would increase the monthly rates of disability compensation for service-connected disabled veterans, and a series of related benefits as described below, by the same percentage that benefits payable under Title II of the Social Security Act are increased effective December 1, 1988.

The bill would also allow that the Administrator of Veterans Affairs may adjust administratively, consistent with the above mentioned increase, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857, who are not in receipt of compensation payable pursuant to Chapter 11 of the title.

Section 314 of title 38, United States Code, currently provides for payment of compensation in amounts ranging from $71 to $1,474, monthly to those veterans with service-connected disabilities rated from ten percent to one hundred percent or totally disabling. Higher rates of special monthly compensation are payable for certain multiple disabilities evaluated in excess of one hundred percent.

Additional monthly compensation for dependents is currently provided under section 315 of the title for the spouses, children and dependent parents of those veterans entitled to disability compensation and whose service-connected disabilities are rated not less than thirty percent disabling.

An annual clothing allowance of $380 is authorized under section 362 of the title to each veteran who, because of a compensable disability, wears or uses a prosthesis or orthopedic appliance or appliances which the Administrator determines to wear out or tear the clothing of such veteran.

Dependency and indemnity compensation is payable under section 411(a) of the title to the surviving spouse of a veteran killed in action or who dies of a service-connected disability. Monthly benefits are based upon the military pay grade of the individual upon whose service-connected death the entitlement is attributed. These pay grades range from E-1 through O-10, and the current monthly benefits under the DIC program range from $518 to $1,327.

This section also provides that where there is an eligible child or children of the veteran, these rates are to be increased by $60 for each child. Subsections (c) and (d) of section 411 relate to additional monthly benefits for surviving spouses who are determined to be in need of aid and attendance or housebound benefits. The current monthly rates are $155 and $76 respectively.

Dependency and indemnity compensation to children of a deceased veteran is payable under section 410 of the title, where there is no surviving spouse of a deceased veteran entitled to dependency and indemnity compensation, in equal shares at the monthly rates of: (1) one child, $261; (2) two children, $376; three children, $486; and more than three children, $583.

Section 414(a) of title 38 provides that the payment of monthly dependency and indemnity compensation to a child who becomes incapable of self-support prior to age eighteen shall be increased by $155. Subsection (b) provides that the monthly dependency and indemnity compensation to a surviving spouse, where there is a child who became incapable of self-support prior to age eighteen, shall be increased by $261. Subsection (c) provides that the monthly dependency and indemnity compensation to a surviving spouse, where there is a child under age twenty-three who is pursuing an approved course of education, shall be increased by $133.

Mr. Chairman, we wish to commend you for holding this timely hearing to consider legislation providing cost-of-living adjustments in both disability compensation and dependency and indemnity compensation benefits. The latest increase in these rates was provided by Public Law 100-227, effective December 1, 1987. The American Legion is strongly supportive of annual adjustments in service-connected disability and survivors' death benefits to allow those entitled to such benefits to keep pace with increasing costs of goods and services.

The Delegates to the 1987 National Convention of The American Legion adopted Resolutions 301 and 296 mandating support of legislation to provide cost-of-living adjustments (COLAs) to the rates of disability compensation and DIC. (Copies attached). We believe that such COLAs should be at least consistent with increases in the Consumer Price Index (CPI). Based upon available information, the rate of inflation for 1988 should be in excess of 4%. The American Legion is prepared to support a proposed COLA which is equal to or exceeds the percentage by which benefits payable under Social Security are adjusted.

S. 2267, the "Veterans' Compensation and Benefits Improvement Act of 1988" proposes in Title I that the monthly rates of disability compensation under sections 314 and 315, dependency and indemnity compensation under 411, 413 and 414, and the clothing allowance under section 362 of the title be indexed to the Consumer Price Index (CPI) determined for the fourth quarter of any fiscal year.

Mr. Chairman, The American Legion is opposed to the indexing of compensation and DIC benefits and we have so testified on a number of occasions on identical proposals in the past. We have found through the years that Congress has been fair and generous in providing for timely cost-of-living adjustments in benefits for service-disabled veterans and their survivors. Of equal importance is the fact that hearings before the Veterans Affairs Committees on legislation relating to COLAs provide a forum at which other legislative issues such as special monthly compensation eligibility criteria, and other statutory changes may be discussed.

Section 201 would amend section 362 of the title to increase the annual clothing allowance to $380. It would also extend entitlement to this allowance to those veterans who receive compensation for a skin condition requiring treatment with topical medication which stains or otherwise damages such veteran's clothing.

Mr. Chairman, we support this provision, as the Delegates to the 1986 National Convention of The American Legion adopted Resolution No. 192 which mandates support of legislation which would provide for the payment of the clothing allowance to veterans with service-connected skin conditions whose clothes are damaged as a result of required topical medications. Our resolution also calls for the extension of entitlement to the clothing allowance to those veterans whose service-connected disabilities result in urinary or fecal incontinence and requires the use of appliances for colostomies, iliostomies, drainage from wounds or infected areas, or the use of an apparatus holding bandages.

Section 202 would amend sections 415(f)(1)(I) and 503(a)(5) of the title to exclude, in the determination of income for parents DIC, and death and disability pension, reimbursment of any kind for any casualty loss provided that amount excluded does not exceed the fair market value of the property involved. This would include proceeds from fire insurance policies.

The American Legion would support this proposed change.

Section 301 would amend the provisions of Public Law 97-377 to extend the special Social Security benefits under the Reinstated Entitlement Program for Survivors (REPS) to those survivors of veterans who died of service-connected causes who are in receipt of benefits under section 412 of the title.

The American Legion is supportive of this measure as it would equalize the level of benefits to certain survivors of service-connected deceased veterans.

Section 302 would authorize the VA under section 3114 of the title to request that the Uniform Service concerned collect an overpayment of VA benefits from an individual's retired military or retainer pay. This collection shall be conducted in accordance with the procedures set forth in 3716 of title 31, USC, and funds collected shall be credited to the VA's appropriation account.

Section 303 would authorize the Veterans Administration to offset veterans benefits to collect overpayments of military retired or retainer pay.

The American Legion does not offer any objection to these provisions.

Section 304 proposes to require disclosure of the Social Security numbers of VA claimants and dependents as a condition precedent to the receipt or continued receipt of compensation or pension benefits.

Veterans disability compensation benefits, with exception of a total rating based upon individual unemployability, and dependency and indemnity compensation to surviving spouses and children, are not contingent upon financial benefits from any source. Parents DIC benefits and nonservice-connected disability and death pension are contingent upon income. Social Security numbers provide a means by which the VA may verify entitlement to certain needs-based benefits in order to prevent overpayments. The number or numbers are generally of record in the veteran's VA claims folder and, as such, should not require a specific request to a current beneficiary in most instances. We would have no objection to this provision.

Section 305 would extend authorization for the operation of the Manila VA Regional Office through 1992.

The American Legion believes the continued presence and operation of a VA Regional Office in the Philippines is essential to providing timely and necessary service to the thousands of service-connected veterans, their dependents and survivors, and other claimants who reside under the jurisdiction of that office. Therefore, we soundly support this section.

S. 2268 - the "Burial Benefit Amendment Act of 1988" proposes to restrict entitlement to the $150 plot allowance, under section 903 of the title, to veterans who, at the time of death, were in receipt of compensation or pension or institutionalized in a

VA facility or at VA expense, as well as those veterans who had neither next-of kin nor sufficient resources to cover funeral and burial expenses applicable to deaths occurring after September 30, 1989. This would be similar to the current eligibility criteria for the $300 burial allowance.

Mr. Chairman, The American Legion is mandated to oppose any administrative or legislative change in the eligibility criteria for the $150 plot allowance for veterans by making it consistent with the current eligibility requirements for the burial allowance by Resolution No. 366 of the 1986 National Convention. (Copy attached).

Public Law 97-35, The Omnibus Budget Reconciliation Act of 1981, eliminated the $300 burial benefit payable toward the funeral expenses of a deceased veteran, except for those veterans receiving compensation or pension, or who die in a VA facility, as a cost-saving measure. The American Legion has consistently stated that the Congress made a serious mistake when it restricted the eligibility criteria for this benefit. As a further cost-saving measure, S. 2268 seeks to impose similar restriction on payment of the $150 plot allowance. We believe the enactment of this legislation would also be a mistake and a disservice to this nation's veterans. Many families of veterans have limited financial resources with little or no means to provide a decent and respectable funeral for the veterans to which they are justly entitled. Furthermore, national cemeteries are not always located near the veteran's home, thus precluding their use. The proposed loss of the plot allowance benefit would deny the families of thousands of veterans this limited amount of financial assistance in the burial of the veteran in a local private cemetery.

Mr. Chairman, The American Legion is further mandated through Resolution No. 497 from our 1986 National Convention to sponsor and support legislation to increase the current burial plot allowance from $150 to $250. (Copy attached). We believe this adjustment is necessary and appropriate in view of the increased cost of burial plots.

Section 3 of S. 2268 would amend section 906 of the title to permit the payment of a monetary allowance in lieu of a government-furnished headstone or grave marker where the veteran purchases a memorial or headstone prior to death. This provision shall apply to deaths occurring after September 30, 1988.

The American Legion would be supportive of this change in the law.

Section 4 would authorize under section 1008 of the title the appropriation of $9,000,000 for FY 1989 and for additional funds for each of the succeeding four fiscal years for the purpose of aiding States to establish, expand and improve veterans' cemeteries.

The American Legion supported the establishment and continued operation of the State Veterans' Cemetery Grant Program. This measure would extend the program through FY 1994 and provide increased funding for cemetery projects. In view of the number of projects planned or completed and the growing interest in participation by a number of States, we wish to express our strong endorsement of this measure.

S. 2269 would amend section 203 of the title to eliminate the requirement that the settlement of construction contract claims in excess of $1,000,000 be provided for specifically in an appropriation and to require, instead, that the Administrator of Veterans Affairs notify the House and Senate Committees on Appropriations of such settlements of more than $1,000,000.

We would offer no objection to this proposal.

S. 2306 would authorize the VA to use multi-year contracting for the acquisition of supplies and services. Such contracts, when found to be cost-effective, shall be for a period not exceeding five years.

The American Legion does not object to this proposal.

Mr. Chairman, that concludes our statement.

69TH ANNUAL NATIONAL CONVENTION
OF THE AMERICAN LEGION
SAN ANTONIO, TEXAS
AUGUST 25, 26, 27, 1987

RESOLUTION NO: 301

SUBJECT: SUPPORT LEGISLATION TO AMEND SECTION 314, 38, USC, SO AS TO INCREASE THE MONTHLY RATES OF DISABILITY COMPENSATION

COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

WHEREAS, Disability compensation is a monthly payment made by the Veterans Administration to a veteran because of a service-connected disability; and

WHEREAS, These disability compensation payments are based on a schedule of ratings of reduction in earning capacity from specific injuries or combination of injuries adopted by the Administrator of Veterans Affairs; and

WHEREAS, In response to increased cost of living and other factors, the weekly take home pay of the blue collar worker in non-agriculture employment is constantly increased; and

WHEREAS, To maintain the purchasing power of these disabled veterans, or those entitled to receive these monthly benefits, the rates payable must respond to cost-of-living increases; and

WHEREAS, It is the opinion of The American Legion that there is no way to adequately compensate a veteran for loss of ability to be a working, productive member of our society, and that the monthly rates of disability compensation do not adequately compensate these disabled veterans for their loss due to reduced earning capacity; and

WHEREAS, The American Legion believes a further readjustment in the amount of disability compensation rates is needed so that these veterans can fulfill their fundamental purpose, that is, to assure that they have sufficient economic maintenance; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in San Antonio, Texas, August 25, 26, 27, 1987, that The American Legion support legislation to amend section 314 of title 38, United States Code, to increase the monthly rates of disability compensation.

69TH ANNUAL NATIONAL CONVENTION
OF THE AMERICAN LEGION
SAN ANTONIO, TEXAS
AUGUST 25, 26, 27, 1987

RESOLUTION NO: 296

SUBJECT: SUPPORT LEGISLATION TO AMEND SECTION 411, 38, USC, SO AS TO INCREASE THE MONTHLY RATES OF DEPENDENCY AND INDEMNITY COMPENSATION

COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

WHEREAS, The Servicemens' and Veterans' Survivors Benefits Act, effective January 1, 1957, established the dependency and indemnity compensation (DIC) program for those widows and children of servicemen and veterans who die of service-connected causes; and

WHEREAS, This Act, as amended, established a grade-related system of monthly DIC payments to eligible survivors; and

WHEREAS, As now provided under authorizing legislation, the Congress, from time to time, must enact legislation to provide cost-of-living increases for those widows and children receiving, or who may become eligible to receive DIC payments; and

WHEREAS, The American Legion believes that to maintain the purchasing power of these widows and children, or those entitled to receive these monthly benefits, the rates payable must be increased; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in San Antonio, Texas, August 25, 26, 27, 1987, that The American Legion support legislation to amend section 411 of title 38, United States Code, to increase monthly rates of dependency and indemnity compensation.

THE AMERICAN LEGION
SIXTY-EIGHTH ANNUAL NATIONAL CONVENTION
CINCINNATI, OHIO
SEPTEMBER 2, 3, 4, 1986

RESOLUTION NO.: 192

CONVENTION COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

SUBJECT: SUPPORT LEGISLATION TO PROVIDE FOR THE PAYMENT OF A CLOTHING ALLOWANCE TO VETERANS WITH A COMPENSABLE SKIN CONDITION AND FOR CERTAIN OTHER COMPENSABLE CONDITIONS WHEN IT IS DETERMINED THERE IS CLOTHING SPOILAGE

WHEREAS, Under title 38, USC, the Veterans Administration shall pay a clothing allowance each year to any veteran who because of disability which is compensable wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which tends to wear out the clothing of such a veteran; and

WHEREAS, There are certain veterans who receive compensation for severe skin conditions that require the use of medication; and

WHEREAS, Those disabilities that result in urinary or fecal incontinence and require the use of appliances for colostomies, ileostomies, drainage from wounds, or infected areas, or the use of apparatus holding bandages, likewise wear and tear on clothing due to abrasion or frequent need of laundering; and

WHEREAS, The American Legion is aware that a substantial number of these veterans have clothing spoilage due to the types of disabilities involved and the use of salves, medications, and appliances for those disabilities mentioned herewith; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Cincinnati, Ohio, September 2, 3, 4, 1986, That The American Legion support legislation to amend section 362 of title 38, USC, to provide for the payment of an annual clothing allowance to any veteran with a compensable skin condition requiring topical medication and also to those veterans who have service-connected disabilities, that result in urinary or fecal incontinence and require the use of appliances for colostomies, ileostomies, drainage from wounds or infected areas, or the use of an apparatus holding bandages.

THE AMERICAN LEGION
SIXTY-EIGHTH ANNUAL NATIONAL CONVENTION
CINCINNATI, OHIO
SEPTEMBER 2, 3, 4, 1986

RESOLUTION NO:	497
CONVENTION COMMITTEE:	VETERANS AFFAIRS AND REHABILITATION
SUBJECT:	SPONSOR AND SUPPORT LEGISLATION TO INCREASE THE PRESENT BURIAL PLOT ALLOWANCE FOR VETERANS FROM $150 to $250

WHEREAS, National cemeteries are not always located near centers of population, thus precluding many veterans from utilizing them; and

WHEREAS, The majority of veterans desire to be buried in either family burial plots or in cemeteries located nearest their homes; and

WHEREAS, The cost of burial plots has increased considerably during recent years; and

WHEREAS, The American Legion perceives that many families of veterans have limited means to provide for the purchase of an appropriate burial site; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Cincinnati, Ohio, September 2, 3, 4, 1986, that The American Legion sponsor and support legislation to increase the present burial plot allowance for veterans from $150 to $250.

THE AMERICAN LEGION
SIXTY-EIGHTH ANNUAL NATIONAL CONVENTION
CINCINNATI, OHIO
SEPTEMBER 2, 3, 4, 1986

RESOLUTION NO.: 366

CONVENTION COMMITTEE: VETERANS AFFAIRS AND REHABILITATION

SUBJECT: OPPOSE ANY LEGISLATIVE OR ADMINISTRATIVE PROPOSAL THAT WOULD AMEND THE ELIGIBILITY CRITERIA OF THE PLOT ALLOWANCE FOR VETERANS BY MAKING IT CONSISTENT WITH THE CURRENT ELIGIBILITY REQUIREMENTS FOR BURIAL ALLOWANCE

WHEREAS, The Omnibus Budget Reconciliation Act of 1981 (PL 97-35), enacted as a cost-saving measure, eliminated the $300 burial benefit payable toward the funeral expense of a deceased veteran except from those veterans receiving disability compensation, nonservice-connected pension, or who die in a VA hospital; and

WHEREAS, For thousands of war veterans who never approached the Veterans Administration for any kind of a benefit during their lifetime, the only recognition received for their honorable military service was the $300 burial benefit payable upon their death; and

WHEREAS, The American Legion has consistently stated that Congress made a serious mistake when it restricted the eligibility criteria for burial allowance; and

WHEREAS, The Administration, in its proposed VA Budget for Fiscal Year 1987, has included a legislative initiative to amend section 903 of title 38, United States Code, to change the eligibility criteria for the $150 plot allowance by making it consistent with the current eligibility requirements for burial allowance; and

WHEREAS, Many families of veterans are in poor financial circumstances having little or no means to provide a decent and respectable funeral for the veteransto which they are justly entitled; and

WHEREAS, National cemeteries are not always located near centers of population, thus precluding many veterans from utilizing them; and

WHEREAS, The majority of veterans desire to be buried in family burial plots, or in cemeteries located nearest their home; and

WHEREAS, The American Legion is mandated to seek the restoration of the former eligibility criteria for the burial allowance to all veterans, and to increase the amount of the plot allowance; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Cincinnati, Ohio, September 2, 3, 4, 1986, That The American Legion oppose any legislative or administrative proposal that would amend the eligibility criteria of the plot allowance for veterans by making it consistent with the current eligibility requirements for burial allowance.

STATEMENT OF
STEPHEN L. EDMISTON
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS OF THE
UNITED STATES SENATE
JUNE 9, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the over 1.1 million members of the Disabled American Veterans and its Ladies' Auxiliary, may I say that our organization deeply appreciates this opportunity to present our views on legislation relating to the service-connected disability and death compensation programs of the Veterans Administration, as well as other legislation which is also before the Committee today.

S. 2011

Mr. Chairman, the provisions of S. 2011, the Veterans' Compensation Cost-of-Living Adjustment Act of 1988 -- introduced by yourself and cosponsored by Senators Murkowski, Matsunaga, DeConcini, Rockefeller, Simpson, Thurmond, Specter, Melcher, Burdick and Hecht -- authorizes a cost of living adjustment in the rates of VA service-connected disability and death compensation benefits.

Section 2 of the bill directs the VA Administrator to increase the basic rates of VA service-connected disability and death compensation benefits, as well as the dependency allowances and, with one exception, the statutory awards which apply to the compensation and DIC programs. Under the terms of the measure, the increases shall take effect December 1, 1988, shall be "across-the-board" and the rate of increase shall be equal to the same percentage rate of increase that is awarded to Social Security beneficiaries (effective the same date) under Title II of the Social Security Act, as determined under Section 215(i) of such Act.

As estimated at the time of S. 2011's introduction in the Senate, the Congressional Budget Office (CBO) forecast for such increase was 5.3%, which would require, in terms of VA expenditures, $471 million in budget authority and $425 million in outlays during Fiscal Year 1989.

To put it in more meaningful terms, Mr. Chairman, the benefit increases would range from a modest $48 per year ($4 monthly) for a veteran with a 10% service-connected disability to $900 more per year ($75 monthly) for a veteran who is determined to be 100% totally and permanently disabled due to service-connected disability.

Mr. Chairman, in consideration of an increase in VA disability and death compensation benefits it is important to recall the principle upon which these programs were established:

> Disability compensation paid to veterans attempts to represent, to the most practical degree possible, the average impairment in earning capacity caused by service-connected disability. DIC benefits, on the other hand, are intended to provide a measure of financial security to surviving spouses and children of veterans whose deaths are attributable to a service-connected disability.

Over the years, this Committee has been most diligent in its efforts to assure that the purchasing power of these benefits keeps pace with our society's rising cost of goods and services. The most recent adjustment of these rates authorized by Public Law 100-227 represented the 14th consecutive year that your Committee has taken action on this most important issue.

I do wish to make special note of the fact that the provisions of Section 2, as presently drafted, would not allow an increase in the "k" award as set forth in Section 314(k), Title 38, USC. This is a special monthly benefit -- presently $63 -- paid in addition to the basic rates of compensation of certain veterans who have incurred a service-connected loss or loss of use of a single extremity or certain other body organs and functions.

Over the years, this particular award has only been infrequently included in prior compensation bills, being last increased (by one dollar) two years ago to its present amount by Public Law 99-576. We therefore ask the Committee to include the "k" award in any compensation bill that it may recommend to the Senate.

Mr. Chairman, with the concern noted above, the DAV does support the disability compensation/DIC adjustments proposed in S. 2011.

Having stated that, we also state -- as we have done in recent years -- our willingness to pose no objection should the Congress decide, for the economic well being of our nation, that the cost of living adjustments (COLAS) in all federal programs should be forgone or subject to delay in Fiscal Year 1989. As members of the Committee are well aware, disabled veterans have been and continued to be willing to do their fair share for America.

However, in view of the fact that such a decision on the part of the entire Congress is not likely to materialize, we urge the Committee to favorably act upon the proposed rate adjustments.

One final comment concerning the proposed cost of living adjustment set forth in S. 2011.

Directing the Administrator to increase benefits by a percentage rate equal to Social Security adjustments -- such adjustments being governed by an automatic formula linked to Consumer Price Index (CPI) movement -- could be perceived as tantamount to or leading to the automatic indexing of VA disability compensation/DIC benefits.

The DAV is strongly opposed to the automatic indexing of compensation and DIC benefits and I shall address this issue later in my testimony with respect to S. 2267.

Mr. Chairman, during the course of the Committee's deliberations of the VA's service-connected disability and DIC programs, we strongly urge the Committee to give serious consideration to amending current law with respect to DIC benefits for surviving spouses and children of certain deceased, totally disabled service-connected veterans.

Under current law -- Section 410(b), Subchapter II of Chapter 13, Title 38, USC -- DIC benefits payable for a death held to be related to a service-connected disability are extended to the surviving spouses and children of certain veterans who, at the time of death:

1. were continuously rated totally disabled, due to service-connected disability for a period of 10 or more years immediately preceding death; or

2. if so rated for a lesser period, were so rated continuously for a period of not less than 5 years from the date of such veteran's discharge or release from active duty.

Mr. Chairman, our specific request for the Committee's consideration relates to the current Section 410(b) statutory language relating to the definition of a surviving spouse.

Current Section 410(b) language defines a surviving spouse as "...married to such veteran for not less than 2 years immediately preceding such veteran's death..."

The DAV strongly believes such language should be amended to define a surviving spouse as one wherein ...

1. the marriage to the veteran occurred before the expiration of 15 years after the veteran's discharge or other release from active duty;

2. the surviving spouse was married to the veteran for one year or more;

3. a child was born of the marriage or was born to them before the marriage.

Mr. Chairman, we urge the Committee to favorably consider amending the 410(b) definition of the term "surviving spouse", as noted above, thereby placing such definition in an identical position with that which currently defines DIC spouses, as set forth in Section 404, Title 38, USC.

S. 1805

Introduced by Senator Mitchell on October 21, 1987, S. 1805 proposes "to protect certain pensions and other benefits of veterans and survivors of veterans who are entitled to damages in the case of In re: 'Agent Orange' Product Liability Litigation."

It is our understanding that S. 1805, if enacted, would preclude the Veterans Administration from considering any payment to any person, as a result of In re: "Agent Orange" Product Liability Litigation (Case Number MDL No. 381) settlement approved on January 7, 1985, by the U.S. District

Court for the Eastern District of New York, for purposes of:

1. nonservice-connected disability and death pension eligibility and payments; and

2. determining inability to defray necessary expenses and income thresholds for VA medical care.

As you know, Mr. Chairman, the primary goal of the DAV is to seek the enactment of legislation to provide Veterans Administration benefits derived as a result of service-connected disability or death. Therefore, the DAV has no official position with respect to the provisions of S. 1805.

However, the serious concerns of Vietnam veterans and their families, as a result of the scientifically unknown consequences of exposure to Agent Orange, is a major concern to the DAV, as well as the entire veterans' community. Since this legislation provides a measure of relief to those veterans and their families affected by this dilemma, the DAV has no objection to favorable passage and enactment of this legislation.

We would suggest, however, that S. 1805 be amended to include the means tested program of Dependency and Indemnity Compensation for parents, as provided under Section 415, Title 38, USC, in order to extend the same protection to the parents of Vietnam veterans who may receive an award from the Agent Orange litigation.

S. 2267

This measure, introduced in the U.S. Senate at the request of the Administration, proposes, through appropriate amendment of Title 38, USC, to:

* provide for the automatic annual indexing of the rates of VA service-connected disability and death compensation benefits (Title I);

* extend eligibility for the VA clothing allowance to those disabled veterans using prescribed medications for service-connected skin conditions that stain or otherwise damage clothing (Section 201);

* provide, for dependent parent DIC and nonservice-connected disability/death pension purposes, for the exclusion as countable income of any fair market value reimbursement received due to casualty (property) loss (Section 202);

* provide for offsets of indebtedness by the VA and other federal agencies (Section 302 & 303);

* require the disclosure of Social Security numbers by VA beneficiaries prior to receipt of VA benefits to which they are entitled (Section 304); and

* extend authority to maintain the VA Regional Office in the Philippines until 1992 (Section 305).

Mr. Chairman, with respect to the automatic indexing of future adjustments of VA service-connected disability and death compensation benefits, the DAV is adamantly opposed to such a proposal, for we regard it as nothing more than a thinly veiled attempt on the part of the Office of Management and Budget (OMB) to inhibit Congressional oversight of the VA's disability and death compensation programs.

As far as the DAV is concerned, decisions to adjust service-connected disability and death compensation benefits should remain firmly in the hands of the Veterans' Affairs Committees and the Congress. Not only is the Congress, led by the Veterans' Affairs Committees, eminently qualified to determine what, if any, adjustment should be made in these benefit levels, but the annual oversight and scrutiny that accompany such considerations have, over the years, resulted in meaningful program improvements that otherwise would not have been forthcoming.

No, Mr. Chairman, we do not want the programs of compensation and DIC to be placed on the "backshelf," for that is what would occur under the Administration proposal. We are aware that you and members of this Committee are of the same opinion and we deeply appreciate your desire to continue your firm and unfettered guardianship of the entitlements of our nation's service-connected disabled veterans, their dependents and survivors.

Section 201 of the bill proposes to amend Section 362, Title 38, USC, to authorize the Administrator to provide a clothing allowance in those cases in which the prescribed use of medication permanently stains or otherwise damages a veteran's clothing.

As you know, current law Section 362, Title 38, USC, provides that a clothing allowance may be paid to a veteran who, because of service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Administrator determines tends to wear out or tear the veteran's clothing.

Mr. Chairman, the DAV is aware of veterans who suffer with skin disorders that require the use of medications that, when in contact with clothing, result in irreparable stains. Therefore, the DAV urges the Committee to favorably consider and report this provision of S. 2267.

Sections 302 and 303 deal with collection of indebtedness by administrative offset. Section 302 would amend Section 3114, Title 38, USC, to authorize the Administrator to request that a Uniformed Service paying retired or retainer pay to a person collect such person's indebtedness to the VA by offset of such retired or retainer pay. The provision would apply where the indebtedness resulted from such person's participation in the compensation or pension program.

Section 303 would amend Section 3101, Title 38, USC, to authorize offset from veterans' disability compensation and pension to collect overpayments of military retired pay and retainer pay.

It is important to note, Mr. Chairman in 1986 Congress approved an amendment to Section 3101, Title 38, USC, authorizing offset of veterans' compensation and pension to collect indebtedness associated with such veterans' participation in the Survivor Benefit Plan (SBP) and Retired Serviceman's Family Protection Plan (RSFPP).

The DAV is sympathetic to the goal of recovery of overpayments and indebtedness to the government, however, the DAV does not support the modifications proposed by Sections 302 and 303 of the bill.

As you know, overpayments occur in those cases where a service-connected veteran, who is also a military retiree, waives, either wholly or partially, miliary retirement/retainer pay in order to receive disability compensation benefits. Such waivers are initiated due to the current Section 3104, Title 38, USC, prohibition which bars dual receipt of these benefits, and in order for disabled veterans to receive VA disability compensation which may be in greater monetary amounts than retirement/retainer pay and which, in all cases, is tax exempt.

Mr. Chairman, the current safeguards of Section 3101 were initiated for the express purpose of protecting veterans' benefits from the claims of creditors. The VA has consistently interpreted this provision of law as excluding, except on a voluntary basis, the offset of veterans' benefits to satisfy indebtednesses, both public and private, including those arising out of programs administered by other federal agencies.

Moreover, all federal departments and agencies (including the VA and the Uniformed Services) can take steps to recover overpayments/indebtednesses which include such courses of action as: recovery from past and future benefit entitlement; recovery through judicial proceedings; and even the use of private debt collection agencies.

As stated above, we can sympathize with the goal of debt collection and we do recognize the special relationship between the VA and Uniformed Services. However, we see no overriding arguments in the instant case that would warrant violation of the long-standing Section 3101 protection of current law.

In our view, this proposal could well be the first step toward the VA becoming a "collection agency" for all governmental overpayments and indebtednesses -- if we authorize offset of Uniformed Services overpayments today, why not Social Security Administration overpayments tomorrow? And, ultimately, why not indebtednesses to Sears and Roebuck and Montgomery Ward?

Section 304 of the bill would amend Section 3001, Title 38, USC, to authorize the VA to require mandatory disclosure of claimants' and dependents' Social Security numbers in all claims for disability and death benefits.

Current law, Section 7(a) of the Privacy Act of 1974, (Public Law 93-579), prohibits any federal, state, or local government agency from denying to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose their Social Security number. The law also requires that any federal agency which requests such a number shall inform the individual whether that disclosure is mandatory or voluntary.

Currently, limited authority exists for mandatory disclosure of claimants' and dependents' Social Security numbers for pension claims and for compensation claims specifically affected by outside income.

Mr. Chairman, the DAV urges the Committee to reject Section 304 of the bill. In our view, current law and regulation reasonably and adequately address this privacy issue.

Finally, the DAV has no objection to the favorable consideration and enactment of Sections 202 and 305 of the bill.

S. 2268

This measure, also introduced in the U.S. Senate at the request of the Administration, proposes through appropriate amendment of Title 38, USC, to:

* restrict current authority for payment of the VA plot allowance;

* authorize payment of the VA headstone allowance in those cases where the veteran has prepaid the cost of the headstone or marker; and

* extend authority for appropriation matching grants under the state cemetery grants program.

Mr. Chairman, the DAV opposes that section of the pending bill which would modify the current eligibility criteria for the VA's plot allowance and thereby remove from such eligibility veterans who served during a period of war. There is no basis for elimination of this modest, justifiable benefit other than to reduce the current level of VA expenditures. Our organization has no objection to the favorable consideration of the remaining two provisions of the bill.

S. 2105

Introduced in the U.S. Senate on February 29, 1988, S. 2105 proposes to amend Section 620 A(e) of Title 38, USC, by extending for 4 years, until September 30, 1992, the VA's authority to provide treatment and rehabilitation services for alcohol or drug abuse disabilities in community-based facilities, such as halfway houses.

Mr. Chairman, the VA has recently transmitted its final report -- as mandated by Public Law 99-166 -- to the Congress on the evaluation study of the contract program for veterans with alcohol and drug dependence disorders.

Following our review of this program evaluation, we are persuaded the program functions as an important augmentation to the VA's overall treatment of veterans suffering substance abuse disabilities. Therefore, the DAV has no objection to favorable consideration of this legislation.

S. 2269

This measure was also introduced at the request of the Administration and proposes to (1) delete the requirement that settlements of claims in excess of $1 million on a construction contract be provided for specifically in an appropriation law, and (2) provide instead that the Administration notify the House and Senate Committees on Appropriations of construction contract settlements of more than $1 million.

Mr. Chairman, the DAV has no official position with respect to the provisions of S. 2269. As you know, the Administration claims that passage and enactment of this legislation will result in savings of substantial interest charges on the settlement amount that accrues during the time it takes to secure passage of the specific appropriation law.

However, we are concerned that if this legislation is enacted, and the contract account does not contain sufficient funds to pay the settlement, the VA may seek reprogramming approval of other construction funds that would result in the delaying or halting of other important construction projects.

We urge the Committee to carefully scrutinize the potential adverse impact this proposal may have upon the overall construction program.

S. 2396

The final Administration proposal introduced in the U. S. Senate seeks to amend Title 38, USC, to authorize multiyear contracts for the acquisition of supplies or services.

Mr. Chairman, the DAV believes that Section 404 of the Veterans' Benefits & Services Act of 1988 (Public Law 100-322) fully and adequately addresses the intent of this proposal. Therefore, we urge the Committee to reject this proposal.

Operations of the Board of Veterans Appeals

Mr. Chairman, attached to your letter of invitation to testify at today's hearing were extensive prehearing questions regarding the operations of the Board of Veterans Appeals.

The DAV was pleased to respond to your request, as well as the prehearing questions. Inasmuch as our response to the prehearing questions was quite detailed, we have no further written comments regarding BVA's operations. However, we would be more than happy to respond to any additional questions.

* * *

Mr. Chairman, this completes my statement. I again wish to thank you and the Committee for extending the DAV this opportunity to participate in today's proceedings.

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

STATEMENT OF

JOHN C. BOLLINGER, ASSOCIATE LEGISLATIVE DIRECTOR

PARALYZED VETERANS OF AMERICA

BEFORE THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

CONCERNING

S.2011, "VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1988"

S.1805, REGARDING AGENT ORANGE PRODUCT LIABILITY LITIGATION

S.2267, "VETERANS' COMPENSATION & BENEFITS IMPROVEMENT ACT OF 1988"

S.2268, "BURIAL BENEFITS AMENDMENTS ACT OF 1988"

S.2269, REGARDING CONSTRUCTION CONTRACT CLAIMS SETTLEMENTS

S.2306, "VETERANS ADMINISTRATION MULTIYEAR CONTRACTING ACT OF 1988"

S.2105, REGARDING CONTRACTS FOR DRUG AND ALCOHOL TREATMENT AND
REHABILITATION SERVICES

THE OPERATIONS OF THE BOARD OF VETERANS' APPEALS

JUNE 9, 1988

Mr. Chairman and Members of the Committee, it is a pleasure for me to be here today to present the views of Paralyzed Veterans of America concerning a variety of initiatives that potentially affect many of our members. I appreciate this opportunity and thank you for inviting PVA to testify.

801 Eighteenth Street, N.W., Washington, D.C. 20006 (202) USA-1300 Fax: (202) 785-4452

S.2011, "Veterans' Compensation Cost-of-Living Adjustment Act of 1988"

Mr. Chairman, PVA commends you for introducing S. 2011. By so doing, you have ensured that veterans, their dependents, and their survivors will, once again, be provided for at an appropriate level of maintenance. Your dedication to the more than 2.2 million veterans who suffer from service-connected disabilities deserves the highest gratitude from all Americans. As you have stated, the VA's service-connected compensation program lies at the heart of our system of veterans' benefits. On behalf of those veterans who find themselves beneficiaries of disability compensation, and on behalf of the more than 300 thousand survivors who are recipients of Dependency and Indemnity Compensation (DIC), we thank you.

This cost-of-living adjustment which you have proposed is to become effective December 1, 1988, and is to be the same percentage as the automatic COLA provided for social security recipients. This important provision is consistent with your efforts of the past to preserve the historical authority of the Congress to determine, by legislation, what constitutes appropriate cost-of-living increases for our Nation's veterans and their families. PVA heartily supports S. 2011.

S.2267, "Veterans Compensation and Benefits Improvement Act of 1988"

The Administration has once again proposed legislation, S.2267, that would index compensation benefits to the annual change in the Consumer Price Index (CPI). The Administration contends that, if enacted, this proposal would guarantee a full and timely cost-of-living adjustment to compensation beneficiaries, including DIC spouses and children.

In keeping with the intent of Congress, I wish to take this opportunity to reiterate PVA's long-standing position regarding the Administration's continued efforts, year after year, to index compensation and DIC benefits. PVA vehemently rejects this attempt to bypass the responsible authority of Congress. We continue to believe that the process of establishing COLA's should not be dictated by the CPI; rather, this control should remain within this legislative body whose members can exercise the flexibility and fairness so vital in determining proper adjustments to compensation and DIC.

Regarding Section 201 of S.2267, PVA supports the enlargement of clothing allowance coverage to include those individuals who must use prescribed medication for a service-connected skin condition in instances where such medication stains or damages clothing. Representing a membership which is all too aware of the damaging effects certain prosthetic devices can have on clothing, PVA can readily sympathize with those who damage their clothing due to the use of medication for skin conditions. We believe this is an appropriate initiative.

Section 202 of S.2267 addresses the topic of income exclusion as it pertains to pension benefits and DIC parents. Title 38 presently excludes, among other items, proceeds of fire insurance policies from countable annual income when determining pension and DIC parents' awards. Section 202 would properly amend title 38 to include the exclusion of reimbursement of any kind, for any casualty loss, provided that in no event shall the amount to be excluded exceed the fair market value of the property involved immediately preceding the loss. In so doing, the Administration has appropriately broadened the types of casualty losses which would qualify under title 38 and, at the same time, limit such exclusions to "fair market value."

Regarding indebtedness offsets by other federal agencies and Administration debt collection by offset from veterans' benefits, PVA is concerned that such provisions can potentially cause undue financial hardship for a disabled veteran. Our main concern is in regard to the establishment of erroneous offsets during any period of time the VA and the Department of Defense exchange compensation and retirement information. There must be a mechanism in place to prevent such a financially devastating occurrence. We are not opposed to the collection of legitimate debts. However, we must provide a system that is sensitive to the special needs of those in receipt of disability payments.

Section 304 of S.2267 proposes to amend title 38 to give the Administrator the authority to require the disclosure of social security numbers of any person who applies for, or is in receipt of, compensation or pension. The provision specifically states that this requirement be a condition precedent to receipt of such benefits. It also requires the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of any such benefits.

PVA has several concerns regarding this provision. First, we question the VA's intentions in this matter and are unclear as to the compelling reasons for requiring social security numbers. As the veteran community increasingly faces budget reductions and staffing cuts, we must wonder what amount of funds and resources will be utilized to conduct surveys, cross references, and a variety of other possibilities based on social security identification. Second, with whom will this information be shared and for what purpose? The VA must ensure and maintain the trust which exists between the Agency and those persons for whom it is mandated to provide care and benefits. Third, when an individual claims he or she does not have a social security number, to what extent, in terms of time and money, will the VA go to validate such information?

Our purpose is not to accuse the VA of having misguided intentions, rather it is to gather sufficient information upon which we can prioritize this initiative. PVA does not support Section 304 of S. 2267 at this time.

Regarding Section 305 of S.2267, PVA supports the extension of the Administrator's authority to maintain a Regional Office in the Philippines. We continue to believe it is important to serve those Philippine veterans who have earned entitlement to VA benefits.

S.2105, Contracts for Drug and Alcohol Treatment and Rehabilitation Services

Mr. Chairman, PVA is pleased to support extension of the VA's alcohol and drug abuse treatment program from September 30, 1988, to September 30, [illegible]. Section 620(e) of title 38 U.S.C. gives the Administrator discretionary authority to contract with community based, non-VA facilities for the treatment and rehabilitation of eligible veterans with alcohol and drug dependencies.

PVA believes the alcohol and drug abuse program is an integral part of comprehensive health care delivery. An effective treatment program, [illegible] conjunction with adequate follow-up and vocational rehabilitation, can lead to successful eradication of alcohol and chemical dependencies.

As you know, the program was originally enacted in 1979 as a pilot program. The program was extended in 1985, as a result of Public Law 99-166. The action we are presently considering will represent the second extension of this program.

Public Law 99-166 required the Administrator of Veterans Affairs to furnish to Congress a report detailing the cost and effectiveness of these activities. As a result of the VA report, it appears that the program has had a positive effect on the participants, especially those who need it most. Veterans who are homeless, or who do not have families to lend support, have benefitted greatly from these services.

Although we support the extension under consideration today, we believe it would be appropriate for this Committee to consider making the program permanent.

S.2269, Construction Contract Claims Settlements

This provision would delete the requirement that settlements of claims in excess of $1,000,000 on a construction contract be provided for specifically in an appropriation law. Rather, the Administrator would notify both the House and Senate Committees on Appropriations of such construction contract claims settlements.

PVA can support this amendment for several reasons. First, we believe it will expedite the resolution of many problems in the field and will minimize construction delays. Second, it maintains a mechanism to alert Congressional Committees of problem areas in specific projects. To this end, PVA believes it would be appropriate and necessary for the Administrator to advise both House and Senate Committees on Veterans' Affairs as well as the Committees on Appropriations. In all cases, such notification should be done promptly and in writing. Third, title 38 maintains the provision whereby such funds may be used only if the settlement is audited independently for reasonableness and appropriateness of expenditures. We believe this amendment is proper and should be enacted.

S.2306, "Veterans Administration Multiyear Contracting Act of 1988"

PVA has no objections to this amendment which would authorize the Administrator to enter into certain multiyear contracts for the acquisition of supplies and services. We believe it is proper that such contracts not inhibit small business concerns from submitting a bid or proposal and, further, that such supplies and services being offered by disabled veterans be given priority consideration.

S.2268, "Burial Benefits Amendments Act of 1988"

PVA strongly opposes any effort made by the Administration to further restrict eligibility for burial benefits. We believe the limitation imposed in 1981, which restricted eligibility criteria for the burial allowance benefit, represented a serious setback in this program. To this end, any effort to further restrict entitlement for plot allowance constitutes a misguided and inequitable approach to an individual veteran's final farewell.

PVA opposes any initiative which denies a veteran who is now entitled and who has earned the benefits of this program.

This amendment to title 38 appropriately involves language which would authorize the VA to reimburse an individual entitled to claim headstone or marker reimbursement in cases where the veteran had already prepaid the cost of his own headstone or marker. We believe this is an equitable provision and support such language.

PVA supports the intent of Section 4 of S.2268. Regarding the $9,000,000 appropriation for grants to aid states in establishing, expanding, and improving veterans' cemeteries, we question the need to nearly double the appropriation for such grants. Although this program represents an excellent method by which the National Cemetery System is supplemented, we believe that the justification for these funds should be carefully scrutinized and justified to the satisfaction of this Committee.

Section 5 of S.2268 eliminates the provision which says "no State may receive grants under this section in any fiscal year in a total amount in excess of 20 per centum of the total amount appropriated for such grants for such fiscal year." PVA does not object to giving the Administrator the authority to determine what is appropriate in granting such funds. We do believe, however, that this Committee should be informed of such determinations promptly and in writing.

S.1805, Regarding Agent Orange Product Liability Litigation

PVA thanks Senator Mitchell for his continued concern for the welfare of those veterans who find themselves beneficiaries of nonservice-connected pension benefits. By definition, these wartime veterans are protected from severe poverty by modest monthly pensions based on need. As you know, Mr. Chairman, the amount of pension for which one qualifies is based on countable annual income. Appropriately, the Administrator excludes certain sources of income when considering a veteran's annual income. For example, legislation under consideration today, S.2267, properly expands such exclusions to include the reimbursement of additional casualty losses.

S.1805 adds a unique category to the present list of exclusions to countable income for pension purposes. If enacted, this legislation would provide an exclusion for payments made to veterans or their survivors under the Agent Orange liability settlement fund. PVA believes such legislation is compassionate and proper.

In view of the court ruling regarding this litigation, we believe the exclusion of this specific payment is legally and morally sound. The amount of potential settlements is relatively small compared to the devastating consequences such payments could have on an individual veteran and his family. This legislation is a unique attempt to avoid undue financial hardship and potential loss of medical care eligibility. PVA supports this initiative and commends Senator Mitchell for his concern for the well-being of this special group of veterans.

Operations of the Board of Veterans' Appeals

Mr. Chairman, in regard to the operations of the Board of Veterans' Appeals, our views and comments are most fully represented by our response to your pre-hearing questions. We request that our letter dated June 2, 1988, regarding this matter be made a part of the record of this hearing.

In our response, we attempted to answer each question as it specifically applied to the Board of Veterans' Appeals. We did not make an attempt to use these questions merely to justify our support of judicial review. We hope our answers give you a clear assessment of our view of the Board of Veterans' Appeals as an entity.

Mr. Chairman, PVA expresses our sincere gratitude for your dedicated concern regarding the issues before us today. The ultimate success or failure of these various legislative initiatives will affect literally millions of veterans. We must therefore never underestimate the importance of our collective mission to better the lives of those who have served our country. PVA thanks this Committee and staff for soliciting our views. "America is number one - thanks to our veterans." Together, we must keep America's veterans number one.

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

June 17, 1988

The Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

This is a follow-up to my letter dated June 14, 1988, regarding the Board of Veterans' Appeals (BVA) use of quotas for certain organizations presenting cases before the BVA traveling board.

We surveyed our Service Representatives and are now able to offer the following comments.

Initially, the Board of Veterans' Appeals in Washington advises the Regional Offices (RO) as to the date and number of days the traveling board will be present. The Regional Office than makes this information available to the Veterans Service Organizations (VSO's). Generally, we are told, this traveling board schedules six hearings per day.

Each VSO then submits a list of cases they believe merit the Board's consideration. These are generally cases about which the VSO feels strongly or cases that involve unusually unique circumstances. If the total number of cases presented by the VSO's exceeds the number of cases the traveling board is able to hear, the Regional Office must decide which cases will be presented.

Most of our Service Representatives stated that they were unaware of actual quotas being employed by the Regional Offices. In most instances, PVA Service Representatives have been able to present those cases they feel deserve consideration. It is generally understood that the total number of cases heard must be limited due to time constraints.

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In summary, PVA is unaware of any intentional effort by the BVA to limit the number of cases certain organizations may present before the traveling board.

Sincerely,

John C. Bollinger
Associate Legislative Director

JCB:das

VETERANS OF FOREIGN WARS OF THE UNITED STATES

STATEMENT OF

JAMES N. MAGILL, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
WITH RESPECT TO

VARIOUS LEGISLATIVE INITIATIVES

WASHINGTON, D. C.
JUNE 9, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to present the views of the more than 2.2 million members of the Veterans of Foreign Wars of the United States with respect to legislation affecting the VA's compensation program and several other initiatives which impact on the Veterans Administration.

The VFW is appreciative of the Chairman for holding this hearing, demonstrating his and the Committee's continuing concern for our nation's veterans.

Mr. Chairman, S. 2011, introduced by you, the Ranking Minority Leader, and several other members of this distinguished Committee, would increase the rates of the Veterans Administration's compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans. This bill, the "Veterans' Compensation Cost-of-Living Adjustment Act of 1988," would provide a cost-of-living adjustment effective

December 1, 1988, and would be the same percentage as the COLA provided Social Security and VA pension recipients on that same date. The Veterans of Foreign Wars is totally in favor of S. 2011 inasmuch as we clearly support a continued cost-of-living adjustment which is at least commensurate with the Consumer Price Index.

S. 2267, introduced by the Chairman of this Committee by request, would amend title 38, USC, so as to automatically index rates of veterans' disability compensation and surviving spouses and children's dependency and indemnity compensation. We believe enactment of this Administration's proposal would have an adverse impact on the VA's compensation programs by eliminating or, at least, reducing congressional review of this vital program. In the past, the Congress has been very compassionate and fair in addressing the needs of our nation's service-connected disabled veterans and we forsee no benefit to these veterans in substituting an automatic process for the personal attention of your Committee and, for that matter, the entire Congress. Therefore, the VFW opposes this provision of S. 2267.

S. 2267 would also increase the annual clothing allowance paid to an eligible veteran from $365 to $380 and authorize the Administrator to provide a clothing allowance in those cases in which the prescribed use of medication permanently stains or otherwise damages a veteran's clothing. In addition, S. 2267 would amend title 38 to expand the current "fire insurance" exclusion to cover comparable payments received by a DIC recipient or a VA pensioner to replace real or personal property which has been damaged, destroyed or lost due to any cause. The VFW supports this provision.

Mr. Chairman, S. 2267 also would authorize the Administrator to request that a uniformed service paying retired or retainer pay to an individual collects that person's indebtedness to the VA by offsetting their retired pay. Conversely, the bill would allow an offset from veterans' disability compensation and pension to collect overpayments of military retired pay and retainer pay. The VFW does not favor enactment of this provision. While we certainly agree that veterans have a moral and legal obligation to repay any indebtedness to the Federal government, we believe all collection attempts should remain within that particular agency where the debt originated. The VA should exercise all accepted awareness of debt collection to satisfy the obligation; and when all else fails, then deny that individual future access to any additional Federal programs. One should keep in mind that whenever the VA declares an overpayment on a military retiree's compensation award, the claimant has already experience a dollar-for-dollar offset. In effect, he has been underpaid by DOD. Perhaps the VA and DOD could negotiate on an in-house transfer of funds thus eliminating possible confusion and expediting debt retirement.

Section 304 of S. 2267 would authorize the VA to require mandatory disclosure of a claimant and dependent's Social Security numbers in all claims for disability and death benefits. Aimed as a tool to detect fraud and abuse, this action would also serve as a cross check to reduce unintentional overpayments which the veteran, dependent or survivor must ultimately repay. The VFW has no objection to this provision.

Finally, S. 2267 would extend the Administrator's authority to maintain a regional office in the Republic of the Philippines until September 30, 1992. The VFW supports this provision.

Another bill before us today, S. 1805, introduced by Senator Mitchell, would exclude payments made to veterans or their survivors under the Agent Orange liability settlement fund from being counted as income when determining a veteran's eligibility for Veterans Administration pensions or medical care. As you know, a class action suit was filed on behalf of 16,000 Vietnam veterans and their dependents against the chemical companies who manufactured and provided the U.S. military with Agent Orange for use as a defolient in Vietnam. A settlement was reached in May of 1984 and a distribution plan was adopted one year later. This distribution plan has two main parts--a payment program to provide cash compensation for veterans who were exposed to Agent Orange and a program to provide grants to organizations to help meet the service needs of those involved in the class action.

Under current law, any compensation received under the agreement would be counted as income for pension purposes. Also, in some cases, the compensation could preclude a veteran from receiving free VA medical care. The VFW believes a veteran should not be denied access to any VA entitlement or program as a result of the Agent Orange settlement and therefore supports the enactment of S. 1805.

S. 2265, introduced by the Chairman of this Committee at the request of the Veterans Administration, would modify eligibility requirements for the plot allowance; authorize a headstone allowance for pre-purchased grave markers; and extend the State cemetery grants program.

Mr. Chairman, this particular piece of legislation, if enacted, would adopt the same criteria for receipt of the plot allowance as is mandated for providing burial allowance benefits. Under current law, only those veterans who are in receipt of disability compensation or pension or certain institutionalized veterans may be entitled to the burial benefit. The plot allowance is currently authorized to all wartime veterans. Inasmuch as the VFW opposed restricting the burial allowance, we certainly oppose this provision of S. 2268. I would like to add, the voting delegates to our most recent National Convention approved resolutions which not only restore the burial allowance to all wartime veterans but also request Congress to increase the plot allowance.

S. 2268 would also permit the payment of the headstone or marker allowance to the estate of a deceased veteran who has purchased a headstone or grave marker prior to his/her death. In view of the fact, prepaid funeral arrangements are gaining in popularity and the VFW supports this action.

Another provision of S. 2268 would extend the cemetery grant program through fiscal year 1994. This program, enacted in 1978, authorizes the Administrator to provide a matching fund, grant-in-aid program for establishing, expanding or improving veterans cemeteries owned and operated by the State. The law, Public Law 95-476, allows grants in an amount not to exceed 50 percent of the total value of the land and the cost of improvements with the remaining amount to be contributed by the State. We firmly believe this program compliments the National Cemetery System by permitting a veteran to be buried with his comrades-in-arms in his home State when there is no national cemetery available. We support this program and would encourage the individual states to take advantage of it.

Finally, S. 2268 would repeal current law which limits the amount of Federal funds that may be received under the State cemetery grant program. At present, no State may receive grants in any fiscal year for a total amount in excess of 20 percent of the total amount appropriated program-wide for that fiscal year. This is to ensure that any State would not receive a disproportionate share of the Federal funds. However, certain situations could occur which would have an adverse effect and result in funds being denied to the States. The VFW supports repeal of the limitation so any unintended result may not occur; and, encourages the VA to continue the practice of ensuring that all States are treated fairly in the distribution of funds through the cemetery grant program.

S. 2269, introduced by the Chairman of this Committee at the request of the Veterans Administration, would repeal the requirement that the Veterans Administration settlements of construction contract claims in excess of $1 million be provided for in an appropriation law. The Administrator would, however, be required to notify the House and Senate Committee on Appropriations of such action. It is our understanding enactment of this legislation would incur no additional costs and, in fact, would result in a cost savings through the reduction of interest payments. The VFW has no objection to this bill.

S. 2306, introduced by the Chairman of this Committee at the request of the Veterans Administration, would authorize the Veterans Administration, in certain cases, to use multi-year contracting for the acquisition of supplies and services. Currently there is no specific authority providing for multi-year contracts. The VFW views this legislation as a liberalization of the VA's authority to procure cost-effective supplies and services and has no objection to its enactment.

The final bill before us today, S. 3105, would extend until September 30, 1992, the "Veterans Administration's Alcohol and Drug Abuse Treatment Program." Under title 38, the Administrator may contract for care, treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. This authority is due to expire September 30, 1988. While the VFW supports this extention, we would encourage the Committee to consider making this vital program permanent. It has been extremely successful and, quite obviously, the need will continue to exist.

In your letter of invitation, you asked the VFW to comment on the operations of the Board of Veterans Appeals. We have also supplied to this committee our responses to your pre-hearing questions on this issue. The Board of Veterans Appeals is often referred to as the "Supreme Court" of veterans' benefit claims. The BVA is the final authority or the "court of last resort" for veteran's claims against the government thus it becomes abundantly clear that every effort must be made to ensure that such a claim is given a comprehensive and thorough review thereby ensuring fair and just treatment under the law.

The Veterans of Foreign Wars has reviewed the current status of the BVA with the Chairman of the Board of Veterans Appeals and the VFW Chief of Appeals. We are very pleased with the results of our discussions. Current statistics indicate that the BVA is maintaining an acceptable level of timeliness as their current response time is approximately 130 days. Response time is calculated from the date an appeal is certified to the Board until the date of the Board's decision. After noting the number of appeals advanced for BVA consideration and the number of board sections now in place, it is our considered opinion that the BVA is handling the case load in a most timely fashion.

The VFW recognizes that the BVA is making every effort to expedite final decisions once the case is certified and received by the Board. However, before an appeal is sent to the BVA much time is needed to fully develop the appeal. statistics indicate that on the average 287 calendar days are spent by the VARO perfecting an appeal. Therefore, it takes on the average 417 days, or approximately 14 months, from the time the veteran initially files the "Notice of Disagreement" with a VA decision until he finally receives a decision on the appeal. The BVA renders a final decision on over 42,000 cases per year utilizing only 21 board sections with each section working approximately 2,000 hours per year. The figures indicate that each board section is producing one final decision every working hour. The VFW believes the BVA can still improve on its timeliness in rendering decisions and the way to do it is for the Congress to appropriate additional funding at all levels of the decision process for increased staffing. Our other main concern, of course, is that due process is protected and sufficient time is taken to allow for a quality decision.

Our observations indicate that the previous problem the Board was experiencing with backlogs is now under control and a more manageable, even number of pending appeals is steadily moving through the system. The average number of pending decisions on hand has now stabilized at approximately 15,500 at any given time. This again, appears reasonable considering the number of sections and the size of the BVA support staff now in place reviewing appeals and rendering decisions.

Now, we will discuss quality. Ideally, a veteran claimant will receive a just decision, rendered in a timely manner, from the BVA and the VA. Timeliness is important but not nearly as important as a thoroughly reviewed and properly considered final decision--a quality decision. We can understand delays in timeliness, but we should never allow the pursuit of timeliness to overshadow the absolute need for first-class quality decisions.

The VFW believes the BVA is making a concerted effort to continue and improve the quality of their final product. The BVA's quality review program is designed to examine every decision made by a board section, analyze decisions found lacking and correct any significant errors. The VFW must compliment the Board on this program and ask that they continue to strive for the best possible decision and allow any reasonable doubt in favor of the veteran.

As we alluded earlier in this testimony, an average of 287 calendar days or over two-thirds of the time needed to completely process an appeal to final resolution is spent at the VARO, before the appeal is even certified to the BVA. This appears to be a very long processing time and certainly contributes to the discontent often voiced by veterans waiting for a final decision. Certainly, some form of time constraint could be put in place to standardize the amount of time expended processing an appeal prior to the final certification to the Board. We realize that the VA's Adjudication Division has undergone some extensive staffing reductions in the past few years and this would logically impact on the timeliness and the quality of their final product. The VFW testified on this problem May 7, 1987, when we appeared before a subcommittee of the House Veterans' Affairs Committee and reported the results of our survey of VFW Service Officers stationed at 58 VAROs across the country: "Our VFW Service Officers overwhelmingly suggest that sufficient staffing and training be provided at every VARO to ensure that every adjudication activity is able to provide the veterans they serve with a timely response and a quality product."

There is another indication of a possible quality problem at Veterans Administration Regional Offices, recent statistics show a steady increase in the BVA remand rate from 14.9 percent in FY '84 up to 19.0 percent in the first two quarters of FY '87. Simply put, remanded cases are appeals that are lacking in development. The VA should take a good hard look at VAROs that are showing a high remand rate and take necessary steps toward improving the quality of their decisions.

Veterans fought to preserve the very system that is now charged with the responsibility of dispensing justice. Our nation's veterans deserve to receive a thorough equitable, and just resolution of their claim for benefits.

The VFW does have two final concerns--First of all, we think it's important that the BVA make every effort to consolidate their operations. At the present time, six board sections are not housed in the main building because of space allocations. A shortage of space is given as the reason why six board sections must be outstationed, but it's interesting to note that other less vital VA operations continue to occupy space in the BVA Headquarter's building. The situation of outstationed board sections should not be tolerated. If the Board cannot be consolidated into its current location, then perhaps it is time to start looking at alternative sites.

Our second concern, also deals with space allocation.. Currently, there are only two hearing rooms available for personal hearings. We again call for an additional hearing room. There is a continuing backlog on personal hearings before the BVA, veterans must, oftentimes, wait an additional 2 to 3 months for a chance to personally state their case. A third hearing room would complement the recent expanded number of board sections and help expedite the appeals process.

Mr. Chairman, in our opinion the BVA is making a strong effort to process appeals in a timely manner while increasing review procedures to improve the quality of their final decisions. We believe that with cooperation from the VA Central Office, the quality of the appeals sent to the Board from the VAROs will improve and the space needed for consolidation will become available through relocation of certain VA activities.

In closing, Mr. Chairman, the VFW was gratified to hear the BVA has discontinued awarding bonus based, in part, on a quota system. As you know, we have opposed this form of incentive in the past and view this action as long overdue.

This concludes my statement. I will be happy to respond to any questions you may have.

Vietnam Veterans of America, Inc.
2001 S St., NW
Suite 700
Washington, DC [illegible]

[illegible]

STATEMENT OF

VIETNAM VETERANS OF AMERICA, INC.

Presented By

RICHARD E. O'DELL
VICE PRESIDENT
and
CHAIRMAN OF VVA'S
COMMITTEE ON ADVOCACY

and

PAUL S. EGAN
LEGISLATIVE DIRECTOR

before the

SENATE VETERANS AFFAIRS COMMITTEE

on

BVA AND ASSORTED LEGISLATIVE
INITIATIVES

JUNE 9, 1988

Mr. Chairman and members of the Committee, the Vietnam Veterans of America, Inc. appreciates the opportunity to present its views at today's hearing. We have addended to this statement the responses to pre-hearing questions posed by the Chairman on May 19 which concern operations at the Board of Veterans Appeals (BVA). We direct the Committee's attention most especially to the addended portion of this statement because we have spent a good deal of time and attention focusing on the BVA in recent months. Our conclusion, in this connection, is that there are serious improprieties that have been permitted in BVA operations that must be repaired both systematically and managerially.

Apart from this hearing's focus on the BVA, several items of legislation are also under consideration at today's hearing. The first of these is S. 2011, the proposed Veterans Compensation Cost-of-Living Adjustment Act of 1988. This measure, which the VVA supports, would authorize a cost-of-living adjustment (COLA) in compensation and DIC equal to that automatically provided for Social Security and veterans pension beneficiaries. The effective date for the Compensation and DIC increase would be December 1, 1988, the same as that for Social Security and veterans pension.

The second measure under consideration today is S. 1805. This bill would preclude the VA from counting money received from the Agent Orange Settlement Fund as income when determining eligibility for certain means tested benefits.

In doing so this bill would close an unintended loophole in the existing law which, if left uncorrected, could cause indigent veterans to lose benefits from VA assistance programs just because they were injured by exposure to Agent Orange. The VVA has also been seriously concerned about the possiblity that impoverished veterans could forfeit benefits from non-VA means tested assistance programs. Indeed, any program that utilizes a means test -- including Food Stamps, Child Nutrition and Support, SSI, AFDC, Medicaid, Earned Income Tax Credit, Guaranteed Student Loans, Subsidized Housing and Low Income Energy Assistance -- could be affected by payments from the Agent Orange Settlement Fund.

The VVA certainly supports this bill, but it must be seen only as a first step in addressing this problem. Naturally, it would be preferable to have this particular measure amended to include exemptions from the other means tested assistance programs prior to final passage by the Senate this year.

Four additional measures under consideration today were all introduced upon request of the Administration. The first, S.2267 would index compensation and DIC to be automatically adjusted annually as with Social Security and veterans pension. The VVA opposes this proposal since it would obviate the need for passage of an annual compensation bill. Section 201 of this measure, to expand clothing allowances, is supportable.

The final three Administration-sponsored measures under consideration, S.2268, S.2269 and S.2306, concern matters for which the VVA has no current position to express.

Added late last week to the agenda of this hearing is an additional bill, S.2105. This measure which the VVA supports, would extend the VA's authority to contract with the private sector for drug and alcohol treatment and rehabilitation services in halfway houses and other community based facilities. That authority is currently scheduled to expire on September 30, 1988.

Vietnam Veterans of America, Inc.
2001 S St. NW
[illegible]
Washington DC [illegible]
[illegible]

June 1, 1988

The Honorable Alan Cranston, Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Cranston:

This will respond to the May 19 letter of invitation to the June 9 hearing which included your pre-hearing questions relating to the operation of the Board of Veterans Appeals. As always, we appreciate the opportunity to provide the Committee with our views. Over the last several months we have undertaken a focus on operations at the BVA because we have suspected a variety of improprieties boding poorly for the veterans claimant attempting to have his or her claim for benefits fairly and thoroughly adjudicated. Naturally, since the BVA is the final step in the VA's adjudicative apparatus and because adverse decisions of fact by the BVA are unreviewable in a federal District Court, we take the operations of the BVA very seriously.

1. **The BVA is faced with deciding approximately 40,000 cases a year. As a management technique to encourage and reward its members for meeting the demand for decisions in a relatively timely manner, the BVA uses production quotas for both its staff attorneys and for its board members. Each panel's goal is 40 cases per week. If the yearly goal is met, the board members are eligible, every other year, for cash bonuses which, according to testimony from the BVA Chairman before the House Committee on Veterans Affairs on October 6, 1987, range between $500 and $5,000. According to BVA officials, the bonuses are awarded by a committee consisting of the Chairman, the Vice-Chairmen, the two deputy Vice-Chairmen and three executive assistants, and are based, first, on exceeding the production quota and, second, on the quality of the decisions, in terms of writing and format but purportedly not in terms of the judgment exercised by the panel member.**
   A. Please comment on what you believe are the effects, both real and perceived, of the BVA's use of bonuses and production quotas.

As we have stated previously before the House Government Operations Subcommittee on Human Resources on February 18 as well as in testimony before this Committee on April 28 in connection with legislation to authorize judicial review of VA adjudications, the influence of year-end bonus-fueled production quotas has had the insidious effect of coloring the claims considerations of Board members. In describing this a recently retired Board member who testified at the February 18 hearing characterized the production quota and bonus system currently in place at the BVA as "evil".

In that witness' explanation of the effects of the current system, he calculated that some Board sections producing in excess of 100 cases per week were spending on average about eight minutes per case. Assuming that some sections are producing appellate decisions at or close to this rate in order to qualify for year-end bonuses, we strongly believe that thoroughness in claims decision-making is being sacrificed improperly to the disadvantage of the veteran claimant. Why the BVA Chairman has turned a blind eye to this situation is unclear.

Another by-product of the quota-based production system is the temptation by some Board members to remand cases that might otherwise consume excessive amounts of time if they were decided on the basis of a thorough examination of the claim. Since it takes less time to remand a case than to decide it, we strongly suspect that many claims are remanded in the interest of meeting or surpassing production quotas. This would seem especially likely during the end of a production year in which year-end bonus eligibility is available.

Yet another unjust by-product of the production quota system is the practice of "courtesy signatures". This occurs when one or two Board section members sign decisions, that they have failed to review, as a courtesy to the other section members. We strongly suspect that this practice has grown common at the BVA as a way of further expediting the processing of claims to meet or exceed production goals. It is our further understanding that this practice has the approval of the BVA Chairman.

Each of these practices relating to the bonus-spurred production goals at the BVA is the subject of a lawsuit recently filed by the VVA. Attached is a copy of the complaint in our lawsuit.

B. By Executive Branch Exemptions, the Board members have been excluded from the Performance Appraisal System, used to evaluate Federal employees, and from the Merit Pay System, prescribed under chapter 54 of title 5, to avoid any appearance of the members being influenced by performance evaluations and merit pay. Please comment on the BVA's use of bonuses in light of these Executive Branch Exemptions.

To answer the question properly requires comment not only on the BVA's use of bonuses to spur production, but also on the use of production quotas to rate Board member eligibility for bonuses. Currently, the BVA is operating an internal merit pay system as well as a performance appraisal system. The exemptions secured in 1982 and 1985, respectively, from the laws governing merit pay and performance appraisal were given to preserve the appearance of BVA independence from pay and performance in deciding appellate claims. Even if the conduct of informal merit pay and performance sytems within the BVA is legal, which is far from clear, the spirit of the exemptions is being ignored.

C. Would you support an elimination of the use of bonuses especially as tied to production quotas?

As with question 1.B., the answer to 1.C. requires comment not only on the bonuses but also on the use of a production quota system at the BVA. While the continued use of bonuses at the BVA is unsupportable on its face, the use of a production quota system must be examined very carefully as to its propriety at the BVA. As with the Executive exemption from the Merit

Pay System, the Executive exemption from the Performance Appraisal System was intended to preserve BVA independence. If not eliminated altogether, the use of production criteria for appraising Board members' performance must at least be modified to assure independence.

An example of BVA failure to assure independence of decisions by individual Board members is evidenced by the recent demotion of Board Section Chief Ernest Wright. Mr. Wright was demoted, with the prior knowledge of the Administrator, in part for poor performance. Since Chief section members are supposed to be exempt from performance review, we would be interested to know how this demotion was justified.

Apart from production as a measure of performance, quality of decision-making is also purported to be measured. The term "quality", as used by the Board Chairman is a bit misleading. It might be reassuring if quality measurements involved the substance of decisions rendered. Instead, as explained in the preface to question number one, quality is measured "in terms of writing and format but...not in terms of the judgment exercised by the panel member."

While it may be detrimental to independence to assess quality in terms of the final judgments rendered in appellate decisions at the BVA, it makes good sense to assess the reasoning and comprehensiveness of Board decisions. In this connection, our experience in representing veterans before the BVA is replete with final BVA decisions that simply state the denial of certain kinds of claims without adequate discussion of how the evidence of record, or lack thereof, supports the decision to deny a benefit. Similarly, decisions by the Board often fail to discuss all of the evidence at hand.

2. Over the last three fiscal years there has been an increase in the number of cases remanded by the BVA to the Regional Office (14.9% of the cases heard in FY 1984 to 20.7% of such cases in FY 1987).

A. Do you have an opinion as to the reason for this increase?

There are at least two reasons why remand rates have increased. The first of these, as discussed in question 1.A., is the clear temptation of Board members to quickly dispose of claims in the interest of meeting or exceeding production goals so as to assure eligibility for year-end bonuses. Another reason is insufficiently developed claims by originating Regional Offices. It is no mystery, in this regard, that proper development of claims is deteriorating under the weight of heavy personnel losses, amounting to 40% of DVB personnel over the last 10 years according to the VA, and a lessening of attention to due process issues.

Losses in personnel at the DVB level, however, are not the only problem. The biases of Regional Office managers and claims adjudicators as well as those of Central Office management against compensation for certain types of claims are also causing poor development of claims. One example of this is seen in compensation claims for PTSD. At times a claim will be denied by the Regional Office without the benefit of an examination having been ordered. Under these circumstances, when the BVA gets the claim it is often remanded with the specific request that an examination be ordered. When this happens, the final resolution of the claim can be delayed, in the worst case, by as much as two years.

B. Do you believe this increase in remands is to the benefit or the detriment of the individual claimant? Please provide the basis for your conclusion.

When remands are motivated by a desire to meet production goals, the veteran is disadvantaged from the standpoint that his or her claim will be delayed. In cases where the BVA remands a case legitimately for insufficient development by the originating Regional Office, the veteran is also disadvantaged by unnecessary delay. In both instances, it can be said that the veteran is somewhat protected since the claim is still alive by virtue of not having been denied. Administratively, this may be seen as granting the benefit of the doubt to the veteran, but in human terms inordinate delays caused by remands can often mean unnecessary psychological and monetary hardships for the claimant.

C. In cases which are currently remanded to the Regional Office for further evidentiary development, would it be beneficial to the claimant, in terms of less delay and more efficient adjudication of his or her claim, to have the BVA retain jurisdiction and control of the case while directing the Regional Office to obtain the evidence and forward it to the BVA for consideration and decision?

It is unclear whether BVA retention of jurisdiction over a claim remanded for further evidentiary development would reduce remand-caused delays. As a practical matter, the current rule of thumb is that no action can be taken on any claim without the veteran's "C" file at hand. Assuming this circumstance will continue, the time taken to mail numerous files back and forth between the BVA and originating Regional Offices will remain constant no matter which adjudicative entity retains jurisdiction.

3. Although the BVA has an index of decisions, and Board members and staff attorneys are purportedly encouraged by the Chairman, through review of certain cases by the Deputy Vice-Chairmen, to make their current decision consistent with previous decisions, there is no requirement that a panel decide current cases in accordance with prior decisions. Accordingly, a different result can be reached, even in cases with substantially similar facts. Additionally, it has been suggested that some panels are more denial- or allowance- oriented than others and that the outcome of a claimant's case often depends on the assignment to a particular panel rather than the merits of the case.

A. During your organization's representation of claimants, have you been aware of a lack of consistency in decisions? If so, please elaborate.

We are aware of wide disparities in similar claims from BVA section to BVA section. Our suspicion that wide disparities in similar cases is supported by discussions we have had with retired Board members who refer to some sections as either allowance or denial prone. Moreover, the incentives to meet and exceed production goals at the BVA most probably has an effect on consistency. If a section, for example, is caught up on its production, it might be inclined to evaluate a similar claim more thoroughly than if it were behind on production goals.

The denial, allowance and remand rates for the BVA in fiscal year 1983, for example, show this variance in two "general medical" Board sections. Each of these sections, sections 6 and 11, adjudicate similar claims. In fiscal year 1983, Board section 6 denied only 60.4% of its cases while Board section 11 denied 83.8%. This is a percentage point differential of over 20%. The percentage differential on allowances between Board sections 6 and 11 was almost 10 percentage points, with section 6 allowing 20.5% of its cases and section 11 allowing only 10.8%. This variance has existed for years. (See attached statistical data.)

B. Have you found that the outcome of a case is often dependent on the panel to which it is assigned?

Yes.

C. What are the benefits and detriments to implementing a requirement that in cases with similar factual patterns the panels follow the precedent of prior decisions?

There could be both positive and negative aspects to adopting a system of using precedent as a way to assure consistency in BVA decision-making. The negative aspect would become evident if a precedent setting decision employed a strict standard. Here though, if judicial review of BVA precedents were available, the veteran claimant could seek to have the precedent overruled.

The arguments favoring use of precedents at the BVA outweigh those against. Currently, many BVA decisions that are handed down fail to articulate the reasons for denying a claim. Under the circumstances, little discussion of the evidence of record is offered. This is most pervasive in cases involving claims for individual unemployability.

4. The BVA panel members and staff attorneys routinely informally consult with the physician panel members of the BVA to ascertain both general medical information and specific medical opinions regarding a particular case, generally without reflecting in the record of the decision that such a physician's opinion was considered in reaching the outcome. On occasion when the physician's opinion forms a major basis for the decision, the physician will sign the decision in place of one of the panel members.

A. Do you see any problem with a physician panel member either substituting his opinion for the one offered by the physician(s) who examined the claimant or supplementing the examining physician's conclusions with his or her own medical judgment? Please elaborate on the basis for your conclusion.

The prospect of substituting the opinion of a physician panel member for that of the examining physician raises a serious question as to which physician's judgment ought to govern. In the actual practice of medicine, it has always been our understanding that the attending or examining physician's opinion was the one given the greatest weight. The BVA admittedly is not engaged in the practice of medicine, but one would think that the examining physician's opinion would outweigh the opinion of a physician sitting on a VA panel who had never even seen the veteran.

B. Do you have any concerns about panel members and staff attorneys utilizing a physician panel member's knowledge without having the consultation reflected in the decision opinion? Please elaborate on the basis for your conclusion.

When a physician panelist's opinion is substituted for the opinion of the examining physician's opinion, a serious question of propriety is raised. However, when a physician panelist's opinion is used to deny a claim without any specific explanation for why the examining physician's opinion was rejected, something is seriously wrong. Unfortunately, this apparently occurs without the knowledge of the claimant's representative.

In this connection, when the record is supplemented by a BVA medical specialist outside the section with jurisdiction over the claim, the veteran and his claims representative should be advised. Due process would seem to require some notification of the supplementing of the record in advance of a final decision as to allow a challenge. Currently no such advance notice is provided.

5. Although cases are assigned to panels by subject matter and there has been an attempt to assign subject areas to panels upon which a physician with that specialty sits, there is no requirement that a physician with a particular expertise be assigned to cases involving that particular expertise (which, in part, encourages the informal consultation process described above).

A. Should doctors be assigned to cases in which their specialty is involved?

It makes sense to assign physician panelists to Board sections deciding cases involving the specialties of the physician panelist. This may be difficult to accomplish, however, given the volume of cases decided at the BVA.

B. In your experience, is the lack of such assignment a concern? Please elaborate.

As alluded to in question four, it would be difficult to state with certainty what effect the presence or absence of medical specialists on certain BVA panels has had. This is because there is no way of knowing that the record has been supplemented or what BVA medical specialist(s) had been consulted.

A more fundamental question, in our view, is associated with the credentials of the physicians employed at the BVA. For example, are these physicians accredited, retired or still practicing? How much does the BVA spend on what kind of in service education?

6. Currently, a decision of a panel must be unanimous. If there is a dissent, the Chairman can either cast his vote with the majority, thereby deciding the case, or can expand the panel by adding three members. The decision of who is appointed by the chairman to serve on the expanded panel is solely in the discretion on the chairman. This method of decisionmaking has been criticized on grounds that (1) by expanding the panel instead of voting with the majority, the chairman is disclosing his preference for the

minority's vote, thereby tainting the independence of the expanded panel; (2) the doctrine of reasonable doubt should operate to allow a claim when the majority of a panel votes to allow it; and (3) the discretion to appoint the expanded panel creates a situation for potential, if not actual, abuse by the chairman in that he can "stack" the expanded panel with persons he knows to have a propensity for granting allowances or denials. Please address each of these criticisms.

The BVA Chairman currently has broad authority to vote when panels are divided, expand panels and channel claims to certain panels with known biases. This authority should be scaled back. The Chairman should, for example, be permitted to vote only in cases where his vote is for an allowance. When panels are expanded, entirely new panelists should be assigned. Similarly, when a claim is up for reconsideration, the original denying panel should not be involved.

Moreover, the doctrine of reasonable doubt seems in need of some type of statutory definition. One way of doing this would require approval of a claim in cases where two of three panelists voted to allow and only one voted to deny a claim. Similarly, if the vote of a Board section is two to one against the veteran, the veteran ought to be entitled to an expanded panel. In cases where panels are expanded, the selection of panelists should be done by rotation. This would shield the BVA Chairman from charges of "stacking". When expanded panels are deadlocked with a three to three vote, reasonable doubt should be resolved in favor of the veteran by allowing the claim.

7. **Regarding the use by the BVA of independent medical opinions (IMO's):**
   A. Does your organization find IMO's to be an important tool in developing and presenting claimants' cases before the BVA?

Independent medical opinions (IMOs) can be requested by either the veteran or by the BVA panel. If the veteran asks for an IMO, the BVA panel can deny the request. These opinions can be useful in developing a claim, but the veteran or his representative have no way of knowing who will be selected to render an IMO from the VA's list. It would obviously be useful to know who is on the VA's list of independent medical experts, how they are selected, their credentials and what their records have been in terms of appellate outcomes.

Typically, IMOs are granted upon the request of the veteran or his/her representative when the medical evidence of record is contradictory or when the medical question at issue is controversial. Under these circumstances, the IMO can have an important effect on the outcome of the BVA's decision. From the claimant's standpoint, this can be either good or bad.

At times the BVA section will request an IMO when no apparent contradictory evidence of record exists. The BVA request for an IMO cannot be challenged by the veteran. THe BVA should be constrained from using IMOs when the evidence of record is non-contradictory. Short of this change, serious consideration should be given to allowing for challenges to BVA requests for IMOs.

B. In those cases in which your organization makes a request for an

IMO, are the requests generally granted?

When requests for an IMO have been made by the veteran, the request is usually denied. However, these cases are often remanded for further development.

C. When a request for an IMO is denied, is your organization apprised of the reasons for the denial?

When requests for an IMO are denied the BVA panel gives an explanation for its decision, but these explanations are often lacking in detail.

D. Please comment on the benefits and detriments of implementing procedures which would encourage more IMO's and require a claimant to be heard if a request for an IMO were denied.

The current regulations governing the request and use of independent medical opinions (IMOs) are adequate. Again, the problem lies in the willingness of the BVA board sections to invoke the IMO regulations, either on their own initiative or at the request of the service representative. Use of an IMO results in a delay of the case as it is referred out of the BVA to the IMO. A BVA board section concerned about quotas and processing high numbers of claims appeals quickly will not want to invoke the IMO regulations.

Requiring that a veteran be heard if a request for an IMO is denied is a good idea. Any procedure which adds to the due process rights of the veteran is laudable. But, why stop here?

If a pre-final-decision hearing or argument on the issue of whether an IMO will be requested is provided for, why not allow a pre-final-decision hearing or argument on all issues on appeal. That is, the BVA should issue a "preliminary decision", which would allow the veteran to know on which evidence and legal grounds the BVA is relying to decide that appeal, before a "final" decision is issued and it is too late.

Currently, the veteran does not know the BVA's rationale for the decision until the decision itself is issued. (This can be challenged through a request for reconsideration, but the standard is extremely difficult to meet, and a veteran rarely wins in the end.) A preliminary decision, or the BVA's version of the Statement of the Case used at the regional office level, would truly protect the due process rights and best interests of the veteran. Such a document in the appeals procedure would allow the veteran to focus on that part of the claim which is critical, and provide the necessary evidence or legal theory to overcome the BVA rationale. A fairer outcome would result because the veteran would have no one to blame for the result -- the evidentiary or legal hurdle has been overcome, or it has not.

3. A concern has been raised that it is very difficult to prove a case of total unemployability at the BVA. The reasons for this purportedly are, at least, twofold: (1) the BVA requires very specific wording of the veteran's claim for total unemployability and when such wording is absent the case is either denied or remanded, and (2) the BVA applies a very strict standard for deciding whether an individual is employable.

A. Please comment on what effect, if any, the above mentioned practices, if they exist, have had on proving total unemployability.

Cases involving claims for unemployability are often very difficult to press. This, among other things in our view, is because certain sections of the BVA use very strict standards. One such standard reported to the VVA by a former employee of the BVA is the so called "coffin tester" rule. This rule purportedly applies to unemployability cases by asking the question, can the veteran test a coffin? If the veteran can be said to be able to test a coffin, the claim for unemployability is denied.

In deciding on claims for unemployability, as with granting reasonable doubt to the veteran, too much is left to discretion. If a system of precedent were employed, consistency in decision-making on unemployability claims would likely improve. The existence of such a system would also assist the veteran in preparing his or her claim.

B. Has your organization encountered difficulty in proving cases of total unemployability before the BVA for reasons other than the ones raised above? If so, please elaborate.

As implied earlier, unemployability claims are among the most difficult to win. Inconsistency in decisions is one problem, but BVA's frequent failure to provide adequate explanations for denials is another. We have experienced and heard from other service organizations that the BVA routinely fails to cite reasons why they find that a veteran is "employable".

Mr. Chairman, this will conclude our responses to your advance questions. As always your attention to the views of the VVA is appreciated.

Sincerely,

Paul S. Egan

Paul S. Egan

Encl: Complaint in lawsuit against the VA
BVA Dispositions by Sections; FY 1982-1987

PSE/jdw

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VIETNAM VETERANS OF AMERICA,
a non-profit corporation,
2001 9th Street, N.W., Suite 700
Washington, D.C. 20009-1125

and

ROBERT M. ST. PIERRE,
288 Dwight Street
Waterbury, CT 06704,
on behalf of himself
and all others similarly
situated,

Plaintiffs,

v.

THOMAS K. TURNAGE, Administrator
Veterans Administration;
810 Vermont Avenue, N.W.
Room 1000S
Washington, D.C. 20420

and

KENNETH EATON, individually and
as Chairman of the BOARD OF
VETERANS APPEALS
811 Vermont Avenue, N.W.
Room 845
Washington, D.C. 20420

and

THE UNITED STATES OF AMERICA,
c/o The Attorney General of
the United States
Department of Justice
Room 5111
Main Justice Building
Washington, D.C. 20530

Defendants.

NO. ______________

CLASS ACTION
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs complain of defendants and each of them, and aver the following:

I. PRELIMINARY STATEMENT

1. This action challenges certain practices and policies of defendants that violate agency statutes, rules, and regulations, and that deny due process of law to individual veterans that appeal their claims for veterans benefits to the Board of Veterans Appeals ("BVA" or "Board"). Specifically, plaintiffs challenge BVA practices and policies that (1) require BVA members to adjudicate a quota of 40 cases per week to be eligible for an annual cash bonus, (2) distribute annual cash bonuses to BVA members based on the number of cases they decide in a year, and (3) provide preferential treatment in granting benefits to claimants whose Senator's or Congressman's name appears on the "Chairman's Personal Signature List".

2. As a result of defendants' policies and practices, defendant BVA denies many veterans' claims for federal veterans' benefits without the actual participation of the entire three-person panel of BVA members who vote to deny these veterans' claims. In many cases, BVA denies veterans' claims after the three panel members voting in a given case have spent such a limited amount of time reviewing the administrative record as to deny due process and raise a substantial possibility of erroneous decisions.

3. These practices and policies have caused BVA panels to engage in the widespread and officially tolerated practice of "courtesy" signing of decisions. BVA panels use "courtesies" when one or more members of a BVA panel review the veterans' administrative record and write a decision, then obtain a "courtesy" signature from one or two other Board members who do not review the decision or the underlying administrative record. Without making an independent judgment on the merits of the case, "courtesy" signatories sign the decision setting forth the vote, the outcome, and the rationale for the decision as a "courtesy." This practice enhances all three panel members' productivity statistics (and hence their chances of receiving cash bonuses).

4. Finally, through the use of the "Chairman's Personal Signature List," BVA and Chairman Eaton have established a policy and practice whereby a certain class of claimants receives preferential treatment vis-a-vis all other claimants based solely on the identity of the claimant's Senator or Congressman. This policy and practice has no rational basis and bears no rational relationship to the purposes for which BVA was established.

II. JURISDICTION AND VENUE

5. This is an action for declaratory and injunctive relief challenging the constitutionality of the

application of 38 U.S.C.A. § 4001 et seq. (West 1979 & Supp. 1988), and regulations and policies promulgated thereunder, which establish BVA and prescribe procedures for its operation. The present operation of BVA denies claimants (as defined in ¶ 17) protection under the United States Constitution and violates the Veterans Administration's ("VA") regulations.

6. This Court is vested with jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346(a)(2) and 1361. (West 1977). This action arises under the Constitution of the United States, and plaintiffs herein aver violations of the Fifth Amendment of the United States Constitution and of 38 U.S.C.A. § 4001 et seq. and regulations promulgated thereunder. Venue is proper under 28 U.S.C. §§ 1391(e) and 1402(a).

III. THE PARTIES

A. Organizational Plaintiff

7. Plaintiff VIETNAM VETERANS OF AMERICA, INC. ("VVA") is a voluntary non-profit corporation, organized and existing under the laws of New York, whose central office is located at 2001 S Street, N.W., Suite 700, Washington, D.C. 20009-1125. VVA is a federally chartered national veterans' organization created to advance the interests and protect the rights of veterans of the United States Armed Forces who served during the Vietnam era. VVA has over 35,000 members

nationwide who belong to more than 300 chapters. VVA is recognized by the VA pursuant to 38 C.F.R. § 14.626 et seq. (1987) to represent claimants before the VA. VVA devotes substantial resources to provide legal representation to Vietnam-era veterans in claims before the VA, its regional offices, and the BVA.

B. Individual Plaintiff and Proposed Class Representative

8. In 1986, plaintiff Robert M. St. Pierre applied to the VA for service-connected disability benefits for major depression with psychosis. After denial of his claim by a VA regional office, Mr. St. Pierre appealed to BVA, which denied his claim in March 1987. The BVA panel received evidence presented by Mr. St. Pierre, including evidence of a normal psychiatric clinical evaluation at the time of Mr. St. Pierre's entry to active duty, evidence of suicide attempts during his active duty, and evidence of hospitalization, examination, diagnosis, and therapy during and after Mr. St. Pierre's period of active service.

9. In denying Mr. St. Pierre's claim, the BVA panel concluded that Mr. St. Pierre's psychiatric episodes in service were manifestations of a personality disorder, which precluded a determination of service connection. The panel also concluded that, even if Mr. St. Pierre had exhibited some neurotic symptoms in service, "they were acute and transitory in nature, not chronic." As a matter of law, the

BVA panel concluded that "[a]n acquired psychiatric disorder, including a psychosis, was not present in service," and that "[a] psychosis may not be presumed to have been present in service."

IV. DEFENDANTS

10. Defendant THE UNITED STATES OF AMERICA includes all governmental agencies, including the VA, charged with administering, *inter alia*, Title 38 of the United States Code, which codifies various statutes affecting veterans of the Armed Forces of THE UNITED STATES.

11. Defendant THOMAS K. TURNAGE is Administrator of the VA and is named herein solely in his official capacity. Defendant KENNETH EATON is chairman of the BVA and is named herein individually and in his official capacity.

V. THE VA ADJUDICATION SYSTEM

A. Statutory Entitlements to Benefits

12. Congress has created programs that provide a large number and variety of benefits for veterans of the United States Armed Forces. Examples of these programs, which create statutory entitlements for veterans, are set forth in 38 U.S.C.A. §§ 301 *et seq.*, 401 *et seq.*, and 501 *et seq.* (West 1979 & Supp. 1988).

13. 38 U.S.C. §§ 301 et seq. and 401 et seq. provide compensation to veterans and the families of veterans who have suffered diseases or disabilities or died in the line of duty. 38 U.S.C. § 310 ("Basic Entitlement") provides for disability compensation as follows:

> For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable . . . compensation as provided in this subchapter . . . .

By way of illustration, 38 U.S.C § 321 ("Basic Entitlement" to wartime death compensation), 38 U.S.C. § 331 ("Basic Entitlement" to peacetime disability compensation), and 38 U.S.C. § 341 ("Basic Entitlement" to peacetime death compensation) contain similar provisions.

14. Similarly, 38 U.S.C. § 401 et seq., provide dependency and indemnity compensation to spouses, children and/or parents of veterans whose deaths were service-connected. 38 U.S.C. § 410(a) provides in relevant part as follows:

> When any veteran dies after December 31, 1956, from a service-connected or compensable disability, the Administrator shall pay dependency and indemnity compensation to such veteran's surviving spouse, children and parents.

15. Similarly, 38 U.S.C. § 501 et seq. provides pension benefits to veterans, their spouses and their children. 38 U.S.C. §§ 521, 571 and 572 and related statutes also create entitlements to pension benefits.

16. The statutory entitlements contained in 38 U.S.C. §§ 201 et seq., 401 et seq., 501 et seq., and related statutes and regulations, without limitation, create property interests (hereinafter referred to as "Veterans' Benefits") protected by the Due Process Clause of the Fifth Amendment.

B. The Adjudicatory Process Relating to Claims for Veterans' Benefits

17. A claimant seeking benefits under the above-mentioned statutes must initially file a claim for veterans' benefits with one of the VA's 58 regional offices.

18. After filing a claim with a VA regional office, the veteran bears the burden of proof to establish active duty military service, a discharge under other than dishonorable conditions, and a disability that was not the result of his or her own willful misconduct. 38 U.S.C. § 101(2); 38 C.F.R. § 3.102. In most cases, a three-member "rating board," consisting of medical, legal, and occupational "specialists," reviews the veteran's submissions, and prepares a "rating" either granting or denying the claim. See 38 U.S.C. § 355.

19. The VA typically communicates denial of all or part of a veteran's claim to the veteran in a computer notice generated by the VA's target system called a Notice of Decision ("ND") that perfunctorily expresses a denial without factual findings or explanation. To challenge an adverse decision, a veteran must file a "Notice of Disagreement" ("NOD"). 38 U.S.C. § 4005; 38 C.F.R. §§ 19.118, 19.119(a). If the VA declines to reconsider after receiving the NOD, it prepares a "Statement of the Case" ("SOC"), that frames the issues for appeal. 38 C.F.R. § 19.119(b). The SOC summarizes the decision, the factual record, and the applicable law, 38 C.F.R. §§ 19.119(b), 19.120, and constitutes the regional office's final decision.

20. If a VA regional office denies a claim for veterans' benefits, the claimant has a right to appeal the denial to BVA.

21. To perfect an appeal to the BVA, the veteran must file a substantive appeal ("SA"). 38 C.F.R. § 19.129(b). The SA must "set out specific arguments relating to errors of fact or law." 38 C.F.R. § 19.123(a). SAs failing to satisfy these requirements are subject to summary dismissal. 38 U.S.C. § 4005(d)(5); 38 C.F.R. § 19.126.

22. The BVA is composed of a Chairman, a Vice-Chairman, and up to 65 members authorized to decide appeals.

38 U.S.C. § 4001(a). The BVA falls under the administrative control and supervision of the BVA Chairman who is directly responsible to the Administrator of Veterans Affairs. Id.

23. Pursuant to statutory authority, 38 U.S.C. § 4002(a)(1), the BVA Chairman has divided the BVA into 21 sections or panels of three members. Each appeal is assigned to one of these sections for adjudication. The regulations require that all three members of a section decide the appeals that come before them. 38 C.F.R. § 19.161. As an exception to this rule, the panel may proceed with two members if (a) one member is absent or unable to serve or there is a vacancy and (b) the BVA Chairman directs the section to proceed without awaiting the assignment of an additional member. 38 U.S.C. § 4002(2)(A).

24. Unanimous decisions by members of the section are final. 38 U.S.C. § 4003(a); 38 C.F.R. § 19.181(a). In cases of disagreement among the BVA panel members assigned to a case, the BVA Chairman must take further action in the case. The BVA Chairman must either concur with the majority (which will constitute a final decision) or must direct further consideration of the case by two or more sections of the BVA, including the section to which the case was originally assigned. 38 U.S.C. § 4003(b); 38 C.F.R. § 19.181(b).

25. Statutes and regulations require the BVA to make complex determinations of fact and law. Specifically,

BVA determines its own appellate jurisdiction, considers on appeal all applications properly before it, conducts hearings on appeal, evaluates evidence of record, and enters written decisions on the questions presented. 38 C.F.R. § 19.111. BVA has appellate jurisdiction over all questions or claims involving benefits under the laws administered by the VA. 38 U.S.C. § 4004(a); 38 C.F.R. §§ 19.2, 19.112(a). Appellate decisions by BVA are based on a de novo consideration of the record. 38 C.F.R. § 19.1(a); Manual of the BVA § 1.05(b)(5). Argument and testimony may be presented to a BVA panel. 38 C.F.R. § 19.182. VA regulations, instructions of the VA Administrator, and precedent opinions of the VA general counsel bind the BVA. 38 U.S.C. § 4004(c); 38 C.F.R. §§ 19.1(a), 19.103(a). The operation of BVA is also governed by the Manual of the BVA ("MBVA-1"), which prescribes agency practices and procedures.

26. BVA panels must base their decisions on the entire record before them. 38 U.S.C. § 4005(d)(5); 38 C.F.R. § 19.180(a). In deciding claims for benefits, BVA must dispose of each issue raised on appeal by ordering allowance, denial, remand, or dismissal. 38 C.F.R. § 19.180(b). BVA decisions must be in writing. 38 U.S.C. § 4004(d); 38 C.F.R. § 19.180(c). Written decisions of the BVA must set forth the issues before the BVA, findings of fact and conclusions of law separately stated, and the

reasons for the BVA's decision. 38 U.S.C. § 4004(d); 38 C.F.R. § 19.180(c).

27. Each section of the BVA is composed of three members, including a Chief Member, a Law Member, and a Medical Member. MBVA-1, § 2.03 (1986). The Chief Member is responsible, inter alia, for the direction, coordination and supervision of the section personnel and is responsible for ensuring that the medical expertise of the Medical Member of the Section and the Board's staff of Medical Advisors is fully utilized. Id; § 2.04(a). The Law Member is responsible, inter alia, for making determinations and entering decisions on all questions and motions on appeals involving claims for Veterans' Benefits. Id., § 2.04(b). The Medical Member is responsible, inter alia, also for making determinations and entering decisions on all questions and motions on appeals involving claims for Veterans' Benefits, and for rendering advisory opinions to other Members or professional staff on medical problems within his or her specialized area of knowledge. Id., § 2.04(c).

28. Claims disallowed by the BVA may not be reopened except where new and material evidence in the form of official reports is secured. 38 U.S.C. § 4004(b). No court has jurisdiction to review decisions of the BVA on any question of fact or law under any statute providing benefits administered by the VA. 38 U.S.C. § 211(a).

29. VA regulations require BVA members to avoid actions which may result in or create an appearance of the loss of complete independence or impartiality. 38 C.F.R. § 0.735-10(b)(4). In addition, VA regulations also require BVA members to avoid financial interests, direct or indirect, that conflict or appear to conflict with their responsibilities. 38 C.F.R. § 0.735-13(a). VA regulations also require BVA members to disqualify themselves in cases that include circumstances that might give an impression of bias. 38 C.F.R. § 19.183(a).

VI. BVA POLICIES AND PRACTICES CHALLENGED HEREIN

30. Notwithstanding VA rules and regulations, the Chairman of the BVA has established a system of cash bonuses for BVA panel members that is coupled with a production quota. The BVA Chairman authorizes cash bonuses for members that are based on the number of cases the member decides in a year. The production quota requires individual BVA members to produce a minimum of 40 cases per week; BVA members who do not produce 40 cases per week are ineligible for cash bonuses.

31. Many of the appeals filed with the BVA require decisions on complex questions of fact and law. To give a thorough and careful review of such appeals, BVA members must carefully review de novo the administrative record created in VA regional offices, plus new evidence submitted

to the BVA, a process which can be time-consuming. As a result of the quota production and cash bonus systems established by the BVA Chairman, thousands of veterans have had and continue to have their BVA appeals denied under circumstances in which the deciding BVA panel members do not review the appeals thoroughly and carefully. These systems greatly compromise the quality of BVA decisionmaking and deny due process to claimants.

32. For several reasons, BVA's production quota and cash bonus systems have affected and continue to affect BVA's decisionmaking adversely:

(a) They promote an excessive rate of remands (i.e., cases are remanded for further development when a thorough and careful review would have resulted in final decisions). For purposes of a section's quota and cash bonus credits, remands are credited with the same value as a decision on the merits, and remand decisions take less time to prepare than decisions on the merits. Therefore, remand decisions occur with disproportionate frequency under BVA's quota and cash bonus systems.

(b) They promote use by BVA members of a method of assembly-line adjudication known as "courtesy" signing of decisions. A "courtesy" occurs when one or two members of the BVA section assigned to an appeal review the administrative record and write a decision. These members then obtain a signature from one or two other Board members (whether from inside or outside of the section) who neither take time to review the administrative record fully nor to make an independent judgment on the outcome of the case. As a "courtesy," the member or members that are approached for signature sign the decision setting forth the vote of the members and the outcome and rationale of the decision. As a result, the Board members enhance their production statistics and their chances of receiving cash bonuses. They also increase substantially the risk of erroneous decisions on appeal.

(c) They promote undue delay in the resolution of claims in two ways. First, members of a section are eligible for cash bonuses based on the members' productivity for a given year. Members are not eligible for bonuses in every year, however. For this reason, members hold back cases decided in a non-eligible year so that they can receive credit for the decisions in a bonus-eligible year. Second, members unnecessarily remand cases by sending veterans' claims back to regional offices for further adjudication, which increases their total production statistics for bonus eligibility purposes. As a result of these practices, decisions for veterans (along with benefits in cases in which the veteran prevails) are delayed solely to enhance BVA members' production statistics.

33. The practice of BVA decisionmaking through "courtesy" signing of decisions is pervasive, well-known, and officially tolerated by defendants.

34. "Courtesy" signing of decisions deprives claimants for veterans' benefits of the thorough and careful de novo review to which they are entitled by statutes and regulations. The system impairs the collegial deliberative process because it eliminates any possibility that the member who signs as a "courtesy" would, after reviewing the administrative record,

(a) convince the other two Board members that the proposed decision is erroneous and should be changed; or

(b) dissent from the majority's decision, forcing the BVA Chairman to take further action that could result in a reversal of the majority's decision and adoption of the dissenting opinion; or

(c) dissent from the majority's decision, thereby alerting the claimant to a difference of opinion that could form the basis of a successful motion for reconsideration or the cumulation of additional evidence to reopen a claim successfully at the regional office.

35. The "courtesy" signing of decisions needlessly wastes the scarce resources of VVA and similar organizations that carefully prepare veterans' claims and appeals.

36. Many BVA members oppose the production quota and cash bonus systems as established by the BVA Chairman

because these systems interfere with Board members' independence and because the systems establish incentives that are inimical to careful deliberation and accurate decisions. Many BVA members have filed formal and informal grievances over these systems. These grievances have been brought to the attention of the Administrator and the Office of General Counsel, but have been rejected by defendants.

37. On information and belief, Defendant Eaton in his role as Chairman of the BVA has promulgated or caused to be promulgated a procedure for processing claims that relies on the "Chairman's Personal Signature List." This procedure grants special treatment for some claimants who are constituents or friends of certain named Senators and Congressmen. Under the "Signature List" procedure, when certain Senators or Congressmen express interest in a BVA case, after initial case processing, the case is routed through the Chairman's Office to the Executive Assistant for review and signature.

38. Under this method of review, a favored class of claimants receives additional review and consideration of their claims that are not afforded to other claimants.

39. In addition, when cases are brought to the Chairman's attention in this fashion, the Chairman is able to influence and acts to influence the outcome of cases in favor of claimants who are constituents or friends of the selected Congressmen and Senators. This method of case

processing discriminates against all claimants that are not constituents or friends of the Congressmen and Senators on the Chairman's Personal Signature List.

VII. INJURY TO PLAINTIFFS

40. As a result of defendants' violations of plaintiffs' constitutional and statutory rights and the BVA's own regulations, plaintiffs have suffered and will continue to suffer the following unquantifiable damages and great and irreparable injury:

(a) Due to the lack of adequate review resulting from the quota system and the "courtesy" signature system, plaintiffs are subject to a high risk of erroneous and arbitrary decisionmaking in their claims for Veterans' Benefits.

(b) Due to the quota system, plaintiffs are subject to a high risk of having claims for Veterans' Benefits unnecessarily remanded or backlogged so that individual BVA members will receive monetary bonuses available under the quota system. These undue and unjustified delays in the decisionmaking process deprive plaintiffs of benefits to which they may be entitled during the remand or backlog period.

(c) Due to the courtesy sign-off system, plaintiffs are deprived of the full range of diversified legal and medical expertise that BVA panels are designed to draw from each member in deciding claims for Veterans' Benefits.

(d) Plaintiffs who do not receive the benefits of the "Chairman's Personal Signature List" are deprived of the additional review given claimants who receive this special treatment and, ultimately, an equal opportunity to be awarded Veterans' Benefits. Plaintiffs have no adequate or available remedy at law and therefore seek declaratory and injunctive relief.

41. On information and belief, plaintiff St. Pierre and many members of the VVA have had their claims for Veterans' Benefits denied by the BVA as a direct result of the practices and policies complained of herein, i.e., the production quota and cash bonus system, the use of courtesy signatures, and the preferential treatment accorded some claimants who are constituents or friends of Members of Congress on the BVA "Chairman's Personal Signature List." On information and belief, because of the pressures for productivity caused by defendants' production quota and cash bonus system, plaintiff St. Pierre and many members of the VVA have had their claims for benefits denied by the BVA by a vote of three Board members, some of whom spent such a limited amount of time reviewing the administrative record as to create a substantial probability of erroneous decision making. On information and belief, because of the pressures for productivity caused by defendants' production quota and

cash bonus system, plaintiff St. Pierre and many members of the VVA have had their claims for Veterans' Benefits denied by the BVA by a vote of three Board members, some of whom did not review the administrative record at all or make an independent judgment on the merits of the case. On information and belief, because of the pressures for productivity caused by defendants' production quota and cash bonus system, many members of the VVA have had their claims for veterans' benefits remanded rather than decided on the merits, and many have had their claims delayed for months before being ultimately granted by the BVA. On information and belief, because of the use of the BVA "Chairman's Personal Signature List," plaintiff St. Pierre and many members of the VVA have had their claims for benefits denied under circumstances in which, had they been a constituent or friend of a Member of Congress on the "Chairman's Personal Signature List," they would have had their claims for benefits granted by the BVA. Many members of the VVA have claims for benefits that are pending before or are being appealed to the BVA and that are subject to the BVA decisionmaking process governed by the production quota and cash bonus system, courtesy signatures, and preferential treatment for constituents or friends of Members of Congress on the "Chairman's Personal Signature List."

42. The practices and policies of defendants complained of herein further injure plaintiff VVA by

diluting and minimizing the effectiveness of the substantial resources VVA devotes to carefully preparing and presenting appeals to the BVA on behalf of those whom it represents before the BVA.

VIII. CLASS ACTION AVERMENTS

43. Pursuant to Rule 23(a), (b)(1), and (b)(2) of the Federal Rules of Civil Procedure, the individual plaintiff and the organizational plaintiff bring this action on their own behalf and on behalf of all persons in the United States similarly situated, i.e., (1) all persons who are eligible or will become eligible to file appeals on claims for Veterans' Benefits before the BVA, (2) all persons whose appeals were denied or will be denied pursuant to the courtesy sign-off system or the quota production system, and/or (3) all persons who are disadvantaged by the operation of the Chairman's Personal Signature List. Members of the foregoing proposed class are referred to herein as "BVA Procedural Claimants."

44. The number of class members exceeds 1000. The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class, including, without limitation, the issues of law presented in the claims advanced herein. The claims of the plaintiffs VVA and St. Pierre are typical of the claims

of the BVA Procedural Claimants class and they will fairly and adequately protect the interests of the class.

45. The prosecution of separate actions by individual members of the proposed class would create a risk of (1) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the defendants; and (2) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

46. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

FIRST CLAIM FOR RELIEF
(Procedural Due Process)

47. Plaintiffs hereby incorporate by reference as though fully set forth paragraphs 1 through 46 of this Complaint.

48. Defendants' practices and policies with regard to distributing cash bonuses, establishing production quotas, and using the "courtesy sign-off" system deprive plaintiffs of their liberty and property interests without

affording them due process guaranteed by the Fifth Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF
(Equal Protection Guaranteed By The Due Process Clause)

49. Plaintiffs hereby incorporate by reference as though fully set forth paragraphs 1 through 46 of this Complaint.

50. Defendants' practice and policy of granting additional review, special consideration and preferential treatment to claimants whose Senator's or Congressmen's names appear on the "Chairman's Personal Signature List" when such Senators or Congressmen express an interest in these claims, but not to other claimants that are similarly situated, establishes a classification that has no rational purpose and bears no rational relationship to the purposes for which the BVA was established. Therefore, this practice and policy violates plaintiffs' right to equal protection guaranteed by the Due Process Clause of the Fifth Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF
(Failure to Abide by Statutes and Regulations)

51. Plaintiffs hereby incorporate by reference as though fully set forth paragraphs 1 through 46 of this Complaint.

52. Defendants' practices and policies with regard to distributing cash bonuses, establishing a production quota, and using the "courtesy sign-off" system violate plaintiffs' rights under 38 U.S.C. 4001 et seq., regulations promulgated thereunder, and BVA's Manual, which require that appeals brought before the BVA must be fully considered by all members of the panel voting on a given case.

FOURTH CLAIM FOR RELIEF
(Failure to Abide by Statutes and Regulations)

53. Plaintiffs hereby incorporate by reference as through fully set forth paragraphs 1 through 46 of this Complaint.

54. Defendants' practices and policies with regard to distributing cash bonuses, establishing production quotas, using the "courtesy sign-off" system, and using the Chairman's Personal Signature List violate plaintiffs' rights under 38 U.S.C. § 4001 et seq., the regulations promulgated thereunder, and BVA's Manual, all of which require that BVA Board members maintain complete impartiality in the adjudicatory process.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as follows:

1. For a declaration that defendants' policies and practices with regard to distributing cash bonuses,

establishing a production quota, and using a "courtesy sign-off" system deprive plaintiffs of their liberty and property without affording them due process guaranteed by the Fifth Amendment to the United States Constitution, and their rights under 38 U.S.C. § 4001 et seq. and VA regulations;

2. For a declaration that defendants' use of the Chairman's Personal Signature List denies plaintiffs equal protection guaranteed by the Fifth Amendment to the United States Constitution and their rights under 38 U.S.C. § 4001 et seq. and VA regulations;

3. For an injunction prohibiting defendants from (a) using any form of a production quota, (b) distributing cash bonuses based upon the number of decisions made by a BVA member or section, (c) adjudicating appeals without each voting board member reviewing the administrative record in the case, and (d) relying on the Chairman's Personal Signature List in adjudicating appeals;

4. For reasonable attorneys' fees and costs of suit incurred herein; and

5. For such other and further relief as the Court might deem just and proper.

Respectfully submitted,

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D.C. Bar No. 366760
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Attorneys for Plaintiffs

DATED: May 5, 1988

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I am not a party to this action, that I am not less than 18 years of age, and that I caused a copy of the foregoing Class Action Complaint for Declaratory and Injunctive Relief to be served upon defendants, by hand delivery, this 5th day of May, 1988, addressed to:

THOMAS K. TURNAGE, Administrator
Veterans Administration;
810 Vermont Avenue, N.W.
Room 10005
Washington, D.C. 20420

KENNETH EATON, individually and
as Chairman of the BOARD OF
VETERANS APPEALS
811 Vermont Avenue, N.W.
Room 845
Washington, D.C. 20420

THE UNITED STATES OF AMERICA,
c/o Attorney General of the
United States
Department of Justice
Room 5111
Marin Justice Building
Washington, D.C.

Edward T. Wahl

BOARD OF VETERANS APPEALS
Dispositions by Board Sections
FY 1982

March 1, 1983

Section	Decisions Dispatched	Allowance Rates (Percent) I	II	III	IV	Year	Remand Rates (Percent) I	II	III	IV	Year
1	2120	13.5	13.1	12.8	13.6	13.2	3.6	7.3	8.0	10.8	7.7
2	1857	8.1	7.2	9.5	9.7	8.6	11.3	11.8	8.7	16.6	12.2
3	1731	20.2	11.7	8.4	13.2	12.9	9.8	11.7	9.2	8.5	9.8
4	1947	12.6	9.4	11.6	6.5	10.0	12.3	15.7	13.5	15.2	14.3
5	2126	10.1	13.9	12.8	11.8	12.3	17.7	16.3	28.4	30.5	23.9
6	2083	15.0	19.1	21.0	21.0	19.3	19.1	14.4	11.2	16.1	14.9
7	1983	13.6	12.9	11.5	7.9	11.5	22.1	18.4	21.4	20.6	20.5
8	1991	16.5	15.9	14.9	11.0	14.6	20.6	12.1	12.7	15.3	14.7
9	2232	13.7	10.3	12.3	11.0	11.6	12.5	11.1	8.2	11.9	10.8
10	1901	15.1	14.5	10.1	13.1	13.1	13.5	16.8	16.5	20.5	17.1
11	2030	10.3	11.6	11.2	11.3	11.1	6.2	4.9	4.1	6.0	5.2
12	2156	13.5	12.8	16.9	12.1	13.8	20.0	19.8	22.4	24.6	21.8
13	2381	16.1	14.8	16.9	17.7	16.3	12.1	15.5	10.2	10.1	12.1
14	2276	13.1	12.4	14.6	12.1	13.1	14.2	16.1	16.7	20.1	16.9
15	2241	11.0	8.9	7.4	8.2	8.7	12.9	7.1	7.4	8.6	8.7
16	2034	18.4	15.3	17.5	19.1	17.6	12.1	7.4	7.5	7.0	8.3
17*	1145	..	8.3	12.4	14.8	13.0	..	15.0	9.1	14.0	11.9
Tng**	113	..	..	..	6.2	6.2	..	..	..	10.6	10.6
SubTot	(34347)	(13.8)	(12.7)	(13.1)	(12.6)	(13.0)	(13.8)	(13.0)	(17.8)	(15.0)	(13.6)
TvlBd	518	34.1	32.3	34.3	38.7	35.5	9.4	[illegible]	15.2	16.7	14.1
Other	906	..	..	..	..	..	69.3	77.7	72.1	74.2	73.5
Total	35771	13.7	12.7	13.1	12.8	13.0	15.3	14.4	14.1	16.8	15.2

* Activated 3/1/82

** Activated 6/13/82

Bd Sect Dispo J5

BOARD OF VETERANS APPEALS
Dispositions by Section
Fiscal Year 1983

Section	Decisions Dispatched	Allowed		Remanded		Denied		Other	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Appellate Group I									
1	1,974	261	13.2	190	9.6	1,518	76.9	5	0.3
2	1,876	310	16.5	246	13.1	1,319	70.3	1	0.1
4	2,056	318	15.5	302	14.7	1,432	69.6	4	0.2
5	2,469	317	12.8	533	21.6	1,614	65.4	5	0.2
6	1,881	385	20.5	354	18.8	1,136	60.4	6	0.3
8	2,188	340	15.5	251	11.5	1,595	72.9	2	0.1
10	2,339	357	15.3	440	18.8	1,536	65.7	6	0.3
11	2,444	264	10.8	128	5.2	2,048	83.8	4	0.2
15	2,369	211	8.9	273	11.5	1,881	79.4	4	0.2
19	112	10	8.9	14	12.5	88	78.6	-	-
Subtotals	(19,708)	(2,773)	(14.1)	(2,731)	(13.9)	(14,167)	(71.9)	(37)	(0.2)
Appellate Group II									
3	1,938	189	9.8	155	8.0	1,587	81.9	7	0.4
7	1,717	173	10.1	325	18.9	1,206	70.2	13	0.8
9	2,142	310	14.5	322	15.0	1,507	70.4	3	0.1
12	2,023	244	12.1	467	23.1	1,299	64.2	13	0.6
13	2,232	347	15.5	227	10.2	1,653	74.1	5	0.2
14	2,094	354	16.9	356	17.0	1,382	66.0	2	0.1
16	2,017	348	17.3	154	7.6	1,514	75.1	1	0.1
17	2,086	265	12.7	292	14.0	1,523	73.0	6	0.3
18	1,208	115	9.5	193	16.0	899	74.4	1	0.1
Subtotals	(17,457)	(2,345)	(13.4)	(2,491)	(14.3)	(12,530)	(71.8)	(51)	(0.3)
All Sections	(37,165)	(5,118)	(13.8)	(5,222)	(14.1)	(26,737)	(71.9)	(88)	(0.2)
Travel Boards	483	155	32.1	96	19.9	231	47.8	1	0.2
Administrative	949	-	-	655	69.0	-	-	294	31.0
Total BVA	38,597	5,273	13.7	5,973	15.5	26,968	69.9	383	0.9

Sec(83) DISPO

BOARD OF VETERANS APPEALS
Dispositions by Section
Fiscal Year 1984

November 21, 1984

Section	Decisions Dispatched	Allowed		Remanded		Denied		Other		Benefits Granted	Letter Recons
		Number	Percent	Number	Percent	Number	Percent	Number	Percent		
Appellate Group I											
1	1850	272	14.7	184	9.9	1393	75.3	1	0.1		
2	2054	359	17.5	213	10.4	1480	72.0	2	0.1		
4	2096	245	11.7	306	14.6	1543	73.6	2	0.1		
5	2465	391	15.9	530	21.5	1541	62.5	3	0.1		
6	2166	415	19.2	354	16.3	1389	64.1	8	0.4		
8	2259	378	16.7	269	11.9	1607	71.2	5	0.2		
10	2040	381	18.7	344	16.8	1314	64.4	1	0.1		
11	2811	290	10.3	118	4.2	2394	85.2	9	0.3		
15	2346	199	8.5	286	12.2	1857	79.1	4	0.2		
19	1908	231	12.1	191	10.0	1483	77.7	3	0.2		
21	127	12	9.5	13	10.2	101	79.5	1	0.8		
Subtotals	(22,122)	(3173)	(14.3)	(2808)	(12.7)	(16,102)	(72.8)	(39)	(0.2)		
Appellate Group II											
3	1864	237	12.7	156	8.4	1468	78.7	3	0.2		
7	1834	227	12.4	247	13.5	1348	73.5	12	0.6		
9	2209	319	14.4	342	15.5	1546	70.0	2	0.1		
12	2091	268	12.8	443	21.2	1368	65.4	12	0.6		
13	2037	237	11.6	259	12.7	1537	75.5	4	0.2		
14	2248	335	14.9	371	16.5	1539	68.5	3	0.1		
16	2195	353	16.1	189	8.6	1653	75.3	-	-		
17	2318	272	11.7	307	13.3	1734	74.8	5	0.2		
18	2127	293	13.8	340	16.0	1491	70.1	3	0.1		
20	1150	140	12.2	149	12.9	861	74.9	-	-		
Subtotals	(20,073)	(2681)	(13.3)	(2803)	(14.0)	(14,545)	(72.5)	(44)	(0.2)		
All Sections	42,195	5854	13.9	5611	13.3	30,647	72.6	83	0.2		
Travel Boards	668	240	35.9	84	12.6	344	51.5	-	*		
Administrative	1201	-	-	880	73.3	-	-	321	26.7	1376	85
Total BVA	44,064	6094	13.8	6575	14.9	30,991	70.4	404	0.9	1376	85
Benefits granted as a percent of remands.										20.9	

Sect FY 84 Disp.

BOARD OF VETERANS APPEALS
Dispositions by Section
Fiscal Year 1985

(October 18, 1985)

Section	Decisions Dispatched	Allowed Number	Allowed Percent	Remanded Number	Remanded Percent	Denied Number	Denied Percent	Other Number	Other Percent	Benefits Granted	Letter Reviews
Appellate Group I											
1	1915	231	12.1	276	14.4	1402	73.2	6	0.3		
2	1765	224	12.7	189	10.7	1348	76.4	4	0.2		
4	2161	284	13.1	254	11.8	1618	74.9	5	0.2		
5	2357	302	12.8	482	20.4	1572	66.7	1	0.1		
6	1955	328	16.8	489	25.0	1133	57.9	5	0.3		
8	1944	356	18.3	294	15.1	1291	66.4	3	0.2		
10	2012	354	17.6	341	16.9	1313	65.3	4	0.2		
11	2371	200	8.4	91	3.8	2069	87.3	11	0.5		
15	2259	191	8.5	239	10.6	1821	80.6	8	0.3		
19	2025	264	13.0	206	10.2	1551	76.6	4	0.2		
21	1777	256	14.4	222	13.0	1286	72.4	3	0.2		
Subtotals	(22,541)	(2990)	(13.3)	(3093)	(13.7)	(16,404)	(72.8)	(54)	(0.2)		
Appellate Group II											
3	2040	250	12.3	187	9.2	1596	78.2	7	0.3		
7	1680	211	12.6	213	12.7	1244	74.0	12	0.7		
9	1872	290	15.5	289	15.4	1293	69.1	0	-		
12	2194	225	10.3	519	23.7	1425	64.9	25	1.1		
13	2308	306	13.3	383	16.6	1616	70.0	3	0.1		
14	2097	320	15.3	401	19.1	1370	65.3	6	0.3		
16	2139	346	16.2	240	11.2	1548	72.4	5	0.2		
17	2262	241	10.7	414	18.3	1589	70.2	18	0.8		
18	1839	272	14.8	178	9.7	1386	75.4	3	0.1		
20	2431	309	12.7	523	21.5	1594	65.6	5	0.2		
Subtotals	(20,862)	(2770)	(13.3)	(3347)	(16.0)	(14,661)	(70.3)	(84)	(0.4)		
All Sections	43,403	5760	13.3	6440	14.8	31,065	71.6	138	0.3		
Travel Boards	677	242	35.7	115	17.0	318	47.0	2	0.3		
Administrative	1,193	-	-	840	70.4	-	-	353	29.6	1779	171
Total BVA	45,273	6002	13.3	7395	16.3	31,383	69.3	493	1.1	1779	171
Benefits granted, as a percent of remands:										24.1	

[illegible]

BOARD OF VETERANS APPEALS
Dispositions by Sections
Quarter Ending September 30, 1986 and FY 1986 Cumulative

Section	Decisions Dispatched		Decisions Allowed				Decisions Remanded				Decisions Denied				Other Dispositions				Benefits Granted		Letter Recons.	
			Quarter		Cumulative		Quarter		Cumulative		Quarter		Cumulative		Quarter		Cumulative					
	Qtr.	Cum.	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Qtr	Cum	Qtr	Cum
pp. Group I																						
1	434	1804	52	12.0%	212	11.8%	71	16.4%	290	16.1%	311	71.7%	1297	71.9%	0	0.0%	5	0.3%				
2	402	1750	45	11.2%	189	10.8%	77	19.2%	306	17.5%	279	69.4%	1247	71.3%	1	0.2%	8	0.5%				
4	517	1992	63	12.2%	244	12.2%	59	11.4%	253	12.7%	395	76.4%	1489	74.7%	0	0.0%	6	0.3%				
5	539	2288	60	11.1%	216	9.4%	85	15.8%	464	20.3%	392	72.7%	1603	70.1%	2	0.4%	5	0.2%				
6	494	1658	103	20.9%	362	21.8%	152	30.8%	496	29.9%	239	48.4%	796	48.0%	0	0.0%	4	0.2%				
8	500	1915	52	10.4%	271	14.2%	83	16.6%	293	15.3%	365	73.0%	1350	70.5%	0	0.0%	1	0.1%				
10	407	1823	66	16.2%	288	15.8%	110	27.0%	398	21.8%	230	56.5%	1131	62.0%	1	0.2%	6	0.3%				
11	471	1911	39	8.3%	128	6.7%	37	7.9%	102	5.3%	391	83.0%	1675	87.7%	4	0.8%	6	0.3%				
15	512	2147	52	10.2%	187	8.7%	80	15.6%	256	11.9%	378	73.8%	1696	79.0%	2	0.4%	8	0.4%				
19	547	1948	63	11.5%	220	11.3%	89	16.3%	270	13.9%	395	72.2%	1456	74.7%	0	0.0%	2	0.1%				
21	427	1680	55	12.9%	183	10.9%	92	21.5%	360	21.4%	278	65.1%	1134	67.5%	2	0.5%	3	0.2%				
Subtotal	5250	20916	650	12.4%	2500	12.0%	935	17.8%	3488	16.7%	3653	69.6%	14874	71.1%	12	0.2%	54	0.3%				
p. Group II																						
3	512	1840	68	13.3%	261	14.2%	54	10.5%	214	11.6%	389	76.0%	1361	74.0%	1	0.2%	4	0.2%				
7	499	1939	80	16.0%	257	13.3%	81	16.2%	332	17.1%	331	66.3%	1332	68.7%	7	1.4%	18	0.9%				
9	423	1774	62	14.7%	266	15.0%	82	19.4%	321	18.1%	278	65.7%	1176	66.3%	1	0.2%	11	0.6%				
12	521	2090	66	12.7%	255	12.2%	133	25.5%	496	23.7%	314	60.3%	1318	63.1%	8	1.5%	21	1.0%				
13	590	2459	99	16.8%	344	14.0%	126	21.4%	470	19.1%	365	61.9%	1644	66.9%	0	0.0%	1	0.0%				
14	502	2012	85	16.9%	289	14.4%	93	18.5%	417	20.7%	323	64.3%	1298	64.5%	1	0.2%	8	0.4%				
16	510	2018	79	15.5%	334	16.6%	85	16.7%	295	14.6%	344	67.5%	1386	68.7%	2	0.4%	3	0.1%				
17	468	1886	43	9.2%	211	11.2%	116	24.8%	431	22.9%	304	65.0%	1225	65.0%	5	1.1%	19	1.0%				
18	496	1753	86	17.3%	256	14.6%	75	15.1%	213	12.2%	335	67.5%	1284	73.2%	0	0.0%	0	0.0%				
20	3	1488	0	0.0%	184	12.4%	1	33.3%	330	22.2%	2	66.7%	965	64.9%	0	0.0%	9	0.6%				
Subtotal	4524	19259	668	14.8%	2657	13.8%	846	18.7%	3519	18.3%	2985	66.0%	12989	67.4%	25	0.6%	94	0.5%				
ll Sections	9774	40175	1318	13.5%	5157	12.8%	1781	18.2%	7007	17.4%	6638	67.9%	27863	69.4%	37	0.4%	148	0.4%				
ravel Boards	153	692	50	32.7%	204	29.5%	29	19.0%	131	18.9%	74	48.4%	356	51.4%	0	0.0%	1	0.1%				
ministrative	293	1136	0	0.0%	0	0.0%	188	64.2%	759	66.8%	0	0.0%	0	0.0%	105	35.8%	377	33.2%	554	1731	42	162
tal BVA	10220	42003	1368	13.4%	5361	12.8%	1998	19.5%	7897	18.8%	6712	65.7%	28219	67.2%	142	1.4%	526	1.3%	554	1731	42	162

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(10/22/86)

BOARD OF VETERANS APPEALS
Dispositions by Sections
FY 1987

ection	Decisions Dispatched		Decisions Allowed				Decisisions Remanded				Decisions Denied				Other Dispositions				Benefits Granted		Letter Recons	
			Quarter		Cumulative		Quarter		Cumulative		Quarter		Cumulative		Quarter		Cumulative					
ppellate	Qtr.	Cum.	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	Qtr	Cum	Qtr	Cum
roup I																						
1	552	1813	73	13.2%	249	13.7%	73	13.2%	239	13.2%	401	72.6%	1317	72.6%	5	0.9%	8	0.4%				
2	479	1642	40	8.4%	153	9.3%	45	9.4%	219	13.3%	393	82.0%	1260	76.7%	1	0.2%	10	0.6%				
4	497	1801	62	12.5%	207	11.5%	68	13.7%	244	13.5%	365	73.4%	1345	74.7%	2	0.4%	5	0.3%				
5	550	2041	55	10.0%	186	9.1%	113	20.5%	434	21.3%	380	69.1%	1417	69.4%	2	0.4%	4	0.2%				
6	677	2492	103	15.2%	411	16.5%	214	31.6%	748	30.0%	359	53.0%	1328	53.3%	1	0.1%	5	0.2%				
8	576	2044	69	12.0%	272	13.3%	110	19.1%	328	16.0%	397	68.9%	1439	70.4%	0	0.0%	5	0.2%				
10	616	1973	79	12.8%	264	13.4%	183	29.7%	573	29.0%	353	57.3%	1131	57.3%	1	0.2%	5	0.3%				
11	523	1920	60	11.5%	220	11.5%	44	8.4%	128	6.7%	417	79.7%	1562	81.4%	2	0.4%	10	0.5%				
19	542	1995	72	13.3%	262	13.1%	95	17.5%	371	18.6%	374	69.0%	1361	68.2%	1	0.2%	1	0.1%				
21	490	1696	48	9.8%	163	9.6%	110	22.4%	415	24.5%	331	67.6%	1115	65.7%	1	0.2%	3	0.2%				
ubtotal	5502	19417	661	12.0%	2387	12.3%	1055	19.2%	3699	19.1%	3770	68.5%	13275	68.4%	16	0.3%	56	0.3%				
ppellate roup II																						
3	491	1654	72	14.7%	225	13.6%	67	13.6%	181	10.9%	352	71.7%	1245	75.3%	0	0.0%	3	0.2%				
7	494	1764	59	11.9%	258	14.6%	83	16.8%	311	17.6%	348	70.4%	1178	66.8%	4	0.8%	17	1.0%				
9	495	1834	57	11.5%	229	12.5%	112	22.6%	370	20.2%	325	65.7%	1229	67.0%	1	0.2%	6	0.3%				
12	512	1933	51	10.0%	184	9.5%	116	22.7%	519	26.8%	339	66.2%	1210	62.6%	6	1.2%	20	1.0%				
13	486	2040	75	15.4%	350	17.2%	117	24.1%	445	21.8%	294	60.5%	1244	61.0%	0	0.0%	1	0.0%				
14	588	1942	61	10.4%	242	12.5%	151	25.7%	406	20.9%	376	63.9%	1289	66.4%	0	0.0%	5	0.3%				
15	546	1843	51	9.3%	175	9.5%	64	11.7%	246	13.3%	428	78.4%	1418	76.9%	3	0.5%	4	0.2%				
16	535	1870	92	17.2%	326	17.4%	82	15.3%	301	16.1%	360	67.3%	1237	66.1%	1	0.2%	6	0.3%				
17	459	1785	52	11.3%	216	12.1%	140	30.5%	544	30.5%	264	57.5%	1018	57.0%	3	0.7%	7	0.4%				
18	516	1927	67	13.0%	256	13.3%	97	18.8%	297	15.4%	352	68.2%	1372	71.2%	0	0.0%	2	0.1%				
20	516	1461	81	15.7%	202	13.8%	126	24.4%	374	25.6%	308	59.7%	879	60.2%	1	0.2%	6	0.4%				
ubtotal	5638	20053	718	12.7%	2663	13.3%	1155	20.5%	3994	19.9%	3746	66.4%	13319	66.4%	19	0.3%	77	0.4%				
11 Sect.	11140	39470	1379	12.4%	5050	12.8%	2210	19.8%	7693	19.5%	7516	67.5%	26594	67.4%	35	0.3%	133	0.3%				
11 Board	157	663	56	35.7%	221	33.3%	36	22.9%	143	21.6%	65	41.4%	298	44.9%	0	0.0%	1	0.2%				
dmin	317	1163	0	0.0%	0	0.0%	202	63.7%	729	62.7%	0	0.0%	0	0.0%	115	36.3%	434	37.3%	548	1781	43	137
tal BVA	11614	41296	1435	12.4%	5271	12.8%	2448	21.1%	8565	20.7%	7581	65.3%	26892	65.1%	150	1.3%	568	1.4%	548	1781	43	137

[illegible]

WRITTEN TESTIMONY SUBMITTED FOR
COMMITTEE ON VETERANS AFFAIRS, UNITED STATES SENATE
BY
ALBERT J. BLAND, NATIONAL COMMANDER
AND
CHARLES M. WILLIAMS, EXECUTIVE DIRECTOR
AMERICAN EX-PRISONERS OF WAR

WITH RESPECT TO
S. 2011 AND S. 2267

Washington, D.C. JUNE 9, 1988

Mr. Chairman and Distinguished Members of the Committee.

We again appreciate the opportunity to provide the views of the American Ex-Prisoners of War on this important legislation before the Committee. We will be both brief and explicit in our remarks.

These two bills essentially seek to achieve the same worthwhile goal. That goal is to assure that rates of VA compensation for veterans with service-connected disability (and dependency and indemnity compensation for their survivors) will keep pace with the cost of living. However, there are crucial philosophical differences that cause us to strongly endorse S.2011 and oppose S.2267.

The latter, S.2267, proposes to make this an automatic process to occur each December 1st without the necessity of review and approval by this body and, of course, the Whole Senate and House of Representatives.

While, at first, this seems an attractive and efficient approach, there is a most serious drawback. It reduces the direct and continuing role of members of Congress in all matters pertaining to those who served and sacrificed for their country.

Mr. Chairman, all veterans value—and deeply appreciate—the positive and supportive role Congress has always played with respect to legislative needs of veterans, particularly disabled veterans. Any erosion of that impairs the opportunity of Congress to effectively exercise its oversight function or to respond to special situations, or to stay fully aware of matters affecting the well-being of veterans.

We support S.2011 which fully preserves the traditional Congressional oversight role so valued by all service organizations while effectively addressing the need for compensation rate increase for veterans in 1989.

We urge favorable action S.2011 and elimination of that section of S.2267 dealing with this same issue.

Thank you.

STATEMENT OF

NOEL C. WOOSLEY
AMVETS NATIONAL SERVICE DIRECTOR

Before The

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

On

S. 1805 "Agent Orange Product Liability Litigation"
S. 2011 "Veterans' Compensation Cost-of-Living Adjustment Act of 1988"
S. 2268 "Burial Benefits Amendments Act of 1988"
S. 2267 "Veterans' Compensation & Benefits Improvement Act of 1988"
S. 2105 "The Drug & Alcohol Abuse Treatment Bill"

9:00 a.m., June 9, 1988
Room 418, Russell Senate Office Building

Mr. Chairman, members of the Committee, AMVETS is pleased to comment on the proposed Veterans' Compensation Cost-of-Living increase as outlined in S.2016, as well as the other proposed bills in your letter of invitation.

The introduction of S.2011 by Chairman Cranston and the Committee's ranking minority member Senator Murkowski, as well as six other Committee members, once again shows the commitment of this body to America's veterans.

S.2011 provides a 5.3 percent increase in the rates of compensation and dependency and indemnity compensation (DIC). We enthusiastically support this legislation, the purpose of which is to preserve the true value of disability compensation in the face of continuing, although diminishing inflation. We particularly appreciate the exemption of these unique entitlements from the indiscriminate Gramm-Rudman cuts.

Mr. Chairman, we should also like to state our willingness to accept a delayed or reduced COLA increase if it is equitable and across the board for all federal programs. It must be noted that veterans have a special interest in this great nation of ours and therefore stand ready to do their fair share for the economic well-being of America.

S.1805 - AMVETS fully supports the legislative initiative as set forth in S.1805. Our support is based on the premise that the monies received from the Agent Orange product liability litigation settlement were to be disbursed to veterans and their dependents, not the Federal Government; which is in effect what would take place if the VA reduced pension payments of individuals who would qualify for monies from the settlement and currently receive assistance under P.L. 588.

It is further noted that S.1805 in no way addresses the continued debate over health risks which may be associated with exposure to Agent Orange and therefore is not in opposition to any of our national mandates or legislative goals.

AMVETS enthusiastically endorses S.1805 and hopes that this Committee and the Congress will do whatever is necessary to insure that this or some similar legislation is passed.

S.2267, Section 101, 102, and 103 - AMVETS regards the Administration's proposal to Index Compensation and DIC COLA's as unacceptable, and we urge this committee and the Congress to reject any such proposal. The very nature of this type of legislation appears to be an attempt to undermine the authority of the Congress and circumvent the congressional principles on which the Veterans Administration was founded. The Veterans' Affairs Committees and the entire Congress have historically been very fair and compassionate in addressing the needs of our nation's service-connected disabled veterans and we foresee no benefit in substituting the personal congressional attention veterans now enjoy with an automatic process. AMVETS has confidence in the Senate Veterans' Affairs Committee, as experience has clearly demonstrated your personal attention ultimately results in the provision of needed and ongoing program improvements. For this reason, AMVETS opposes the indexing of compensation and DIC cost-of-living adjustments.

Section 201: AMVETS supports this section of S.2263 as a necessary measure in keeping pace with the replacement cost of clothing.

Section 202: Based on replacement cost in todays market, AMVETS is unsure if reimbursement at a fair market value of the property involved immediately preceding the loss, would in fact cover the actual replacement cost. We, therefore, have some reservations as to this proposed change.

Section 304: It would appear that the VA should have the authority to request the Social Security number of any individual who receives VA benefits either directly or indirectly, as a dependent. There are various benefit payments other than pension which are calculated based on other income sources, i.e.: National Guard, Reserves, S.B.P., Parent DIC, etc., and the VA should have the ability to cross check the accuracy of reporting. This authority should be across the board and not limited to a select few, as it currently stands. AMVETS therefore supports this proposed change to Title 38 USC.

Section 305: AMVETS supports the continued VA presence in the form of a Regional Office located in the Philippines.

S.2268 - While the intent of Section 3 of S.2268 may be an attempt to correct a possible injustice wherein a veteran who has prepaid the cost of his own headstone or marker may not file a claim for reimbursement even though his funds were expended prior to his death; on the surface it would seem only justified that if the veteran prepaid the cost of this item he should be reimbursed. We also feel that this is a just course of action but have some reservations. Our society tends to be somewhat transient and especially our veteran population. Therefore, we are concerned that far too many veterans may in fact utilize this option in planning for their burial, and through no fault of their own may have to be buried in another state. The cost of shipping the prepaid marker would be prohibitive and the veteran would have used his eligibility for a VA marker and therefore the veteran may end up in an unmarked grave.

Another situation will be where the veteran buys a marker for himself and his wife, and files for reimbursement of same; shortly thereafter his wife passes away. Sometime later the veteran remarries and spends several happy years with his new spouse before he passes away. Now his widow wants the VA to furnish a marker for the veterans grave: I would not like to be the one to explain that the veteran had used his eligibility years before when he received payment to defray the cost of a headstone made for him and his first wife.

These are the types of situations that get negative media coverage and generate calls to the various congressional offices stating the VA is without compassion and does not care about our veterans.

Section 4 - AMVETS strongly supports the Aid to States program for establishment of veterans' cemeteries. We hope that the $9,000,000 requested will adequately fund this program. We should also like to take this opportunity to state that even with the state program growing as it has over the past years, this does not in anyway take the responsibility of burial space out of the hands of the VA and AMVETS support the position that the VA should have at least one National cemetery open for burials in each state.

S. 2105 - AMVETS enthusiastically supports the legislative initiatives as spelled out in S.2105. The treatment of alcohol and substance abuse must be viewed as a priority at all times when effectively planning a total rehabilitation program for our nation's veterans. The prevention of alcohol and substance abuse will in effect save the VA millions of dollars in medical treatment savings. As someone once said "an ounce of prevention is worth a pound of cure."

AMVETS
National Headquarters
4647 Forbes Boulevard, Lanham, Maryland 20706
(301) 459-9600

May 31, 1988

The Honorable Alan Cranston
United States Senate
Committee on Veterans' Affairs
Washington, DC 20510-6375

Dear Senator Cranston:

Attached please find AMVETS responses to the pre-hearing questions you requested at the time of invitation to participate in the Committee's June 9, 1988 hearings.

If you have any questions or comments, please feel free to contact my office at your earliest convenience.

Sincerely yours,

Noel C. Woosley

Noel C. Woosley
National Service Director

NCW/hes

Attachments

American Veterans of World War II, Korea and Vietnam

At the outset we respectfully decline comment on the Chairman's questions pertaining to the Chairman of the Board of Veterans Appeals "stacking" of panels, "Chairman's Signature List", "courtesy signatures", or abuses of power by Chief Board members. We have no actual knowledge of instances as described, and therefore cannot offer any qualified comment.

1. (A, B, C) There is a misconception, which is shared by many veterans, of the BVA's use of production standards and bonuses, and that is that the agency has hidden agendas to deny worthy veterans their benefit entitlements. This perception has not yet permeated throughout the veterans community, but the use of standards and bonuses is fodder for growing innuendo that the operation of the veterans benefit delivery system is less than honest.

We do not share that opinion. Our concerns lie with the effect productivity standards have on judgemental quality, due to the "industrialization" of the decision making process. We feel that deliberation time is restrictive, adversely affecting prioritizing of simple cases, delaying disposition of the more complex type cases, and the quality of decisions.

We feel that the use of bonuses to reinform high production quotas is inequitable. The fact that a case is hurried through the system is for no benefit to the veteran. We therefore support elimination of this bonus system as it now stands.

2. (A,B,C) It is our belief that the current rate of remanding cases back to agencies of original jurisdiction is directly correlated to the use of production standards and reductions in decision making personnel at VA Regional Offices. In the case of rating boards, we recently presented the following testimony to the Committee on Veterans' Affairs - Timeliness and Quality of Processing Compensation and Pension Claims. (See attached)

Further it is our belief that the increased rate of remanded cases is of benefit to an appellant. We have no reason to believe that cases are remanded for any other purpose than to clarify and strengthen a record to the benefit of an appellant.

We would object to any change in current due process procedures, wherein a case would remain in the physical control of the Board of Veterans Appeals which a Regional Office secures additional evidence to satisfy the Board's needs. The purpose of a remand is to ensure that a veteran is provided due process and that includes full and complete review which my be favorable on the basis of the new evidenced and a decision, on such evidence as requested by the board.

3. (C) We would favor a procedural system to provide consistency in the decision making process. We feel that precedent case would tend to strengthen the principle of reasonable doubt,

which is now subject to varying interpretations.

4. (A,B) When the Board of Veterans Appeals uses a staff medical advisor, is it noted on the face sheet. We believe their opinions are embodied in the D & E portion of the decision. As this process is non-evidentiary and informal we have no confirmed knowledge as to how this impacts the decision making. It would appear on the surface that the opinions rendered by physician panel members would be just as apt to create a favorable outcome as opposed to that of an adverse result. If the informal opinion of a panel physician is diametrically opposed to that offered by the examining physician and is in fact relied upon to deny benefits, then it should in fact be reflected in the record. It should be noted that we are unable to elaborate on the questions you have posed in this area as we have no way of knowing how often and to what extent this informal exchange takes place. While you state that the Board of Veterans Appeals panel members and staff attorneys routinely informally consult with physician panel members, we have no way of confirming or denying this practice.

5. The Board currently employs 21 physicians from a variety of fields, some of which have nothing to do with the specialty of the Board section to which they are assigned. It would indeed be a panacea if each specialty in the medical field were represented at the Board of Veterans Appeals and enough specialist were available to have each case properly assigned. However, we realize that this is not economically feasible due to the current budget constraints and the reluctance to increase federal agencies.

6. AMVETS has been unable to factually substantiate these alleged practices and therefore has no comment.

7. IMEs are an important tool in cases we believe present a complex or difficult medical question.

At times our requests for an IME are not granted. We are told that the medical question presented is not so complex or difficult as to require an IME.

It would be beneficial from the standpoint of the veteran, as it would tend to convince him that a medical source outside the VA made a determination on his claim. It would be detrimental in the sense that if all IME requests were granted routinely, many frivolous questions would have to be presented, slowing up the appellate process.

8. We have found that the agency in toto is hypersensitive to allowing individual unemployability. The only problem we have identified with the use of "regulatory language" is periodic AOJ use of language that pertains to scheduling total ratings, that is averaged impairment, rather than looking at the basically eligible individual's inability to secure or follow a substantially gainful occupation due to service connected disability.

Factors for consideration are not strictly limited to the presence of service connected disabilities. Negatively impacting on the decisions are severe non-service connected disabilities, a veteran reaching a normal retirement age at the time he became unemployable, and a poor employment history which was not the sole result of the affects of service connected disability.

9. Once again, AMVETS has been unable to factually substantiate these alleged practices and therefore has no comment.

STATEMENT OF

NOEL C. WOOSLEY

AMVETS NATIONAL SERVICE DIRECTOR

Before The

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

On

TIMELINESS OF PROCESSING AND QUALITY OF DECISIONS WITHIN THE DEPARTMENT OF VETERANS BENEFITS

9:00 a.m., May 26, 1988

Room 334, Cannon House Office Building

Mr. Chairman, members of the Committee, AMVETS is pleased to present our views on the subject of timeliness and quality of decisions with respect to the Department of Veterans Benefits.

Nearly all of our National Service Officers (NSOs) report delays due to staffing (FTEE) constraints of regional office personnel.

Administrative divisions are hard hit by a lack of local authority to replace personnel who chose to leave the system. Data transcription units are understaffed resulting in distribution of dictation to other stations with resultant delays ranging from four weeks to six months to transcribe formal rating decisions, statements of case, and hearing transcripts. Our NSO's do report though, formal ratings are usually prioritized for promulgation purposes.

File activities are effected with backlogs in drop-file, pull-mail, and delivery of file to the various activities of the R.O. Our Atlanta, Georgia office reports that that RO currently has no file clerks, and adjudicators are required to regularly rotate duties to perform file activities. This not only affects employee morale and the quality of work performed, timeliness is affected.

Many of our NSOs express serious concern about reducing the number of station rating boards, and the assignment of medical members to more than one board. The ROs place a great emphasis on productivity goals causing members to hastily sign off on rating actions without independently reviewing the evidentiary record. Without an independent review by the board members, descenting opinions are a scarcity, and there is an expressed reliance on the Board of Veterans Appeals to resolve obvious reasonable doubt, or request needed development.

Our NSOs report unusual delays in MAS (Medical Administrative Services) response to adjudications requests for medical treatment records, scheduling, and returning official examination reports for completion of rating activities. We are led to believe that these delays, which may extend up to five months, even though adjudication submits multiple requests, are due in fact to shortages in personnel.

Our concerns with respect to the continued reduction of staff levels within the Department of Veterans Benefits are clearly spelled out and documented in great detail in the Independent Budget, which the members of this Committee received copies. The information found in this cooperative endeavor, by four of the major veterans organizations, addresses many of the issues expressed in Mr. Applegate's letter of invitation to appear here today.

In the realm of quality of decisions AMVETS has identified a chronic problem in the adjudication of one specific disability and we feel it is important to share our concerns with this Committee.

As you are aware, Post Traumatic Stress Disorder is an acquired psychoneurosis wherein symptoms manifest subsequent to experiencing an emotionally traumatic event; generally outside the range of usual human experience. Symptoms may begin either immediately, or many years subsequent to the traumatic event, rendering this a complex disorder for adjudication and diagnostic purposes.

DVB is aware of these complexities and issued specific instructions, DVB Circular 21-86-10, to local rating authorities to ensure proper development, and decisional judgment. It is our experience that these instructions are not regularly followed.

Verification of a stressor is a necessity in this claim. The veteran must reveal, often at great pain, the stressor to treating clinicians, examining physicians, and the rating board. To the latter usually in writing at DVBs insistence. The rating board must verify the actual existence, or reasonable probability of an exposure to a stressor. This is accomplished by either reviewing the veteran's discharge certificate; requesting his/her military personnel records to verify military occupation specialties and unit assignments as alleged; or requesting corroborative evidence from the U.S. Army and Joint Services Environmental Support Group.

Most often, rating boards are satisfied to deny a veteran's claim by simply reviewing the military discharge certificate. This document may not reflect the primary MOS of the veteran when he served in combat. It also may not reflect all of his entitled awards, i.e., Combat Infrantymah's Badge, Combat Action Ribbon, Purple Heart, Combat Engineer Badge, Combat Medic Badge, Fleet Marine Force Combat Operations Insignia, in addition to the more readily recognized valorous awards. Standing alone, any of these awards establish reasonable probability of exposure to a stressor to satisfy the diagnostic criteria of the disorder, and rendering of a favorable decision.

An additional problem encountered with the review of discharge certificates pertains to the veteran's reported Military Occupation Specialty (MOS). We have found that many veterans actually served in traditional combat specialties, yet their DD-214s show MOSs of cooks, medical record specialists, clerks, mechanics, truck drivers, and other non-combat related duties which were performed subsequent to combat assignments.

Due to these known deficiencies we feel that it would be beneficial for DVB to amend its already standing instructions to request copies of the veteran's military personnel records, as described in section d(2) upon receipt of a PTSD claim.

Our other concern with PTSD is the rating board's rejection of a favorable diagnosis replaced by examining and treating clinicians. Rarely are claims submitted without medical evidence of the presence of the disorder. In fact, many times evidence is submitted with variable diagnoses from treating physicians and examining physicians. These diagnoses may include substance abuse disorders, personality disorders, psychoses and other neuroses preceding the diagnosis of PTSD. This does not rule out the presence of the disorder, and may be indicative of the veteran acclimating to the therapeutic environment.

Embodied in clinical reports, stressors are usually described, discussed, and symptoms associated with inservice events. The claims folder is not always provided to the examiner for official examinations and the examiner must rely on the veteran's self-reported history, and description of his disorder in a hurried exam. The examining physician may state that "PTSD is probably present" without actually providing an adequate diagnosis for rating purposes.

We feel that in cases where there are variable diagnoses, with presence of symptoms associable to inservice events, and examination reports which are in conflict with known facts, that those cases should be referred back to the examining physician for comprehensive reconciliation of diagnosis, as provided in current regulations.

This concludes my statement and I will be happy to answer any questions the members of the Committee may have.

DAV

Motto: "If I cannot speak good of my comrades, I will not speak ill of them."

DISABLED AMERICAN VETERANS

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June 3, 1988

Honorable Alan Cranston, Chairman
Senate Veterans' Affairs Committee
SR-414 Russell Senate Office Bldg.
Washington, DC 20510

Dear Chairman Cranston:

The following comments of the DAV are in response to your prehearing questions regarding the operations of the Board of Veterans Appeals.

Question No. 1

As we have stated in previous Congressional testimony, the DAV believes the cash bonuses paid to BVA Board members for achieving established production goals does create a perception that quantity, rather than quality of decisions is more important. While we firmly believe this is not the case and, in fact, believe BVA diligently strives for quality decisions, nonetheless we believe the use of such production goal bonuses should cease.

Question No. 2

The DAV believes the steady increase in the number of cases remanded by BVA in recent years is the direct result of a number of factors. First, and foremost, is the inadequate staffing and funding for training of VA Regional Office adjudication personnel. This situation has driven VARO personnel to become more concerned with meeting production requirements. As a result far too many cases are certified to BVA when they are not fully developed, even when this fact has been pointed out to VARO adjudication personnel by veterans service organization representatives.

Another factor that has influenced the increase in the number of remands is the aggressive representation by service organization representatives, both at the VARO level and at BVA. The DAV strongly believes the influence of our intensive training program has clearly improved upon the quality of representation afforded VA claimants.

Unquestionably, the increase in the number of remands has been to the benefit of VA claimants. For example, in fiscal year 1987, 20% of all remanded cases were allowed at the VARO level. Therefore, the DAV does not believe remanded cases should be returned directly to BVA following completion of evidentiary development by the VARO. To the contrary, we feel giving VA claimants another opportunity to achieve a favorable decision at the VARO level is in their best interest and protects their rights of due process. In our view, the real means to reduce delays and remands in VA claims processing is to provide VARO's with sufficient staffing and funding for training such staff.

Question No. 3

A. Generally, the DAV has found BVA decisions consistent. However, when we have noted inconsistencies we have pursued the issue and they have generally been resolved to our satisfaction.

B. Following many years of experience and gaining a personal understanding and knowledge of individual board sections at BVA (including VARO Rating Boards), veteran service organization representatives can sometimes predict, with a fair degree of accuracy, the outcome of certain types of cases when they are assigned to board sections (or rating boards) with which they are most familiar.

C. To implement a requirement that, in cases with similar factual patterns, BVA panels must follow the precedent of prior decisions raises a number of questions:

1. What prior decisions will establish the precedent?

2. How far back will BVA search for decisions to establish the precedent?

3. What effect will intervening legislation have upon establishing which decision will set the precedent?

4. Who will be responsible for deciding which decision will be the precedent?

5. Will previous VA General Counsel or Administrator opinions or decisions be a factor in determining the decision that is precedent?

6. Would such precedents be prospective or would VA and BVA be required to impose them retroactively on all existing claims where benefits are being paid to current VA beneficiaries?

Quite frankly, this suggestion requires further clarification and response to our questions before we can comment on the benefits or detriments of its implementation.

However, depending upon a response to our questions it would appear, on the surface, that implementation of this suggestion could prove to be a double-edge sword.

Question No. 4

A. We do not believe physician panel members substitute their opinion or supplement the conclusions of examining/treating physicians. The role of physician panel member is very much different from that of the examining/treating physician. The physician panel member role is quasi-legal and his/her opinion follows legal guidelines based upon a review of all the objective medical information contained in the claimant's record. Most examining/treating physicians do not have all of the claimant's objective medical information available to them nor do they have a complete understanding of the VA's legal guidelines.

B. Whenever BVA board members or staff attorneys obtain a consultation from a physician panel member, and that consultation forms the basis of the final decision of the board, we believe the opinion should be reflected in the decision.

Question No. 5

Obviously assigning cases to physicians in which their speciality is involved is the ideal method. However, as you have pointed out this is not always the case.

The DAV has no problem with this situation. We don't believe this will prevent a physician from employing sound medical judgement based upon years of experience and medical training. Should a physician need information or assistance in a case, numerous resources are available, to include Independent Medical Expert (IME), Chief Medical Director (CMD) and Armed Forces Institute of Pathology (AFIP) opinions.

Question No. 6

Contrary to the criticisms noted, when the Chairman does not vote with the majority when a dissent exists in a decision but rather chooses to expand the panel, it is, in our view, a reflection of the Chairman's desire to allow the board members to retain authority for their decisions. It appears to us the Chairman does not want to give the impression that he is dictating or unduly influencing the board, but rather vesting in them full responsibility to render the decision.

Question No. 7

A. When appropriate, the DAV does request Independent Medical Expert (IME), Chief Medical Director (CMD) or an Armed Forces Institute of Pathology (AIFP) opinions. In our opinion, such opinions have proven to be very useful in many claimant's cases

B. In our experience, most IME requests are generally granted. However, such requests are not granted in every case and, I might add, DAV requests for IME's are not routinely requested in every case that we present to BVA.

C. When BVA denies our request for an IME, the reasons for the denial are incorporated in the final BVA decision.

D. As noted previously, the DAV only requests an IME when we believe a case could benefit from such an opinion. Quite frankly, most cases, by and large, are not appropriate for an IME. In our view, the wholesale use of IME's could very well diminish their usefulness in deserving cases. However, we would welcome the opportunity, in those cases where an IME request has been denied, to get another "shot" at convincing the Board to grant our requests before a final decision is rendered.

Question No. 8

The BVA, in our experience, does not accept jurisdiction of any claim unless it is specifically set forth and has been fully developed by the VARO of original jurisdiction. This includes claims for unemployability. Further, once a case has reached BVA and the veteran or the service organization representative clearly raises an issue that was not certified to the Board, the Board in all such cases remands that issue to the VARO of jurisdiction for developement of the issue.

In addition, I must point out that the standard for eligibility for unemployability (which is very strict) is the same regulatory standard used throughout the VA adjudication process, at VAROs and BVA alike.

Question No. 9

We believe a practice known as "courtesy signatures" does occur at BVA in certain situations. Specifically, we believe this occurs with acting physician panel members who, due to statutory restrictions contained in Section 4002(B), Title 38, USC, are limited to working no more than 270 days during any 12 month period.

Apparently, due to the lengthy process employed by BVA to evaluate and obtain full appointments for these individuals, the above cited statutory limitations come into play. That is to say, these acting physician panel members continue to fulfill their duties on the Board but are unable to affix their signatures to the opinions they provide. Consequently, another physician panel member is requested to sign the opinion as a "courtesy," if you will, for the physician panel member who is awaiting full appointment.

In our opinion, if the BVA decides to obtain full appointment for a physician panel member after they have carefully and completely evaluated the individual, such appointment should automatically coincide with that determination.

Therefore, we would urge the Committee to seriously consider amending Section 4002(B), Title 38, USC, thereby eliminating the need for this practice to take place.

With respect to a practice you refer to as "top-sheeting," we have no reason to believe such a practice occurs at BVA.

Question No. 10

As you know, Chief Board members are responsible for managing the cases that have been assigned to their sections. We are aware that senior attorneys are routinely assigned and are responsible for the more complex, time consuming cases in a section. Therefore, because such cases impact adversely upon these senior attorneys' ability to meet their production goals, Chief Board members also assign so-called "blade" cases to these individuals in order that they may continue to meet their production goals. It appears to us that such a practice is merely good management and proper workload distribution and not, as has been alleged, an abuse of powers.

Question No. 11

The DAV is aware that the Chairman of BVA has a so-called "Chairman's Signature List." We are also aware that when those U.S. Senators and Representatives whose names appears on that list express an interest in a particular case, the written response from BVA to one of these members of Congress is personally signed by the Chairman.

Quite frankly, we do not believe the Chairman extends preferential treatment to any member of Congress, including those on the "Chairman's Signature List."

Mr. Chairman, that concludes our response to your prehearing questions on the operations of the Board of Veterans Appeals.

Sincerely,

Stephen L. Edmiston

STEPHEN L. EDMISTON
Deputy National Legislative Director

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PRE-HEARING QUESTIONS
FOR KENNETH E. EATON, CHAIRMAN, BOARD OF VETERANS' APPEALS
FROM SENATOR ALAN CRANSTON, CHAIRMAN, COMMITTEE ON VETERANS' AFFAIRS

1. Do you believe the BVA has sufficient financial and personnel resources to carry out high quality adjudications and decision writing in a timely manner?

We believe that both the administration and Congress have made good faith efforts over the past several years to provide the Board of Veterans Appeals with the resources necessary to accomplish our mission. Two of the measures that we think constitute the best indicators as to whether we are successfully accomplishing that mission are the timeliness and quality of the services we are providing.

The indicator that we have traditionally used to measure our overall timeliness of service delivery is BVA response time on appeals, which is defined and discussed in greater detail in our response to question no. 2. As of the end of Fiscal Year (FY) 1983, the Board's response time had reached an all-time high of 301 days. Our response time had risen to this level due to a relentless growth in the number of new appeals that were being filed and to an inadequate resource level available to respond to the increasing workload demands. None of our efforts to improve upon the Board's efficiency and productivity were sufficient to meet the ever increasing backlog of new appeals that were accumulating under the then existing structure of 18 Board Sections. Our estimates at that time indicated that cases were backlogged six to seven months while awaiting BVA callup. In recognition of this situation, section 208 of Public Law 98-223, passed in 1984, authorized an increase from 50 to 65 Board Members. Additional personnel and monetary resources were then made available to accommodate a balanced expansion of the Board to 21 Board Sections by the conclusion of FY 1984.

The expansion in the number of Board Sections and the accompanying infusion of additional resources allowed us to turn the tide on the appeals backlog. By the midpoint of FY 1984, we had reduced our cumulative response time to 268 days, and by mid-FY 1985 our response time was down to around 130 days. For all intents and purposes, the backlog of cases in the field awaiting BVA action had been eliminated. Since 1985, we have been able to maintain our response time in the 110 to 130 calendar day range. We believe that a response time within this range strikes a reasonable balance between an appellant's desire for a timely decision and the Board's requirements for processing time that is sufficient to allow staff attorneys and Board Members an adequate period of deliberation and to ensure that adequate standards of due process and overall substantive quality are met. From the perspective of meeting our goals relative to timeliness, we believe that the resources which have been made available to us have been sufficient.

We do not believe that timeliness should be sought at the expense of quality. The quality of our services must be the balancing measure used to determine whether the Board is successfully accomplishing its mission. Measurement of quality in the accomplishment of a mission such as ours clearly entails an element of subjectivity. There are many aspects to the issue of what constitutes quality in the context of the BVA's mission and operations. Given a predefined, limited level of available resources, a major role of management is to prioritize the various dimensions of quality and to realistically decide which qualitative aspects of a program are indispensable. The qualitative aspects of the VA appellate program that we regard as indispensable are the ultimate results of BVA final decisions, i.e., whether an appeal is allowed or denied. We do not feel that there is room for compromise relative to quality at this level, and we believe that the Board has been successfully fulfilling its responsibilities at its current resource level.

There is a second form of quality that we feel is an essential component of an effective VA appellate program structure. Quality in this context is focused less upon the ultimate results of an appellate decision and more upon the processes leading to those results and the manner in which the results are presented. A portion of the efforts that we have been directing to our own quality review program over the past few years has attempted to address this dimension of quality. Some of the points we have strived for in our quality review program have included rigorous attention to due process requirements; assurance that all decisions are carefully explained; close attention to the caliber of decision writing to ensure that the Board's findings are conveyed clearly and effectively; intensified review of all appeals within certain categories which, due to the topical content, may be generally regarded as significantly more controversial than the average appeal (e.g., ionizing radiation appeals, Agent Orange appeals, etc.); and attention to maintaining a certain level of consistency among decisions and Board Sections, without disrupting the vital decision-making independence of the Board Members. While we believe that our efforts over the past few years to upgrade the Board's quality level in these areas have met with positive results, we would acknowledge that there is room for improvement. Furthermore, where resource limitations have necessitated decisions as to whether exigencies of production and timeliness demands should take precedence over these qualitative program aspects, some concessions have been made in the quality area. We believe that additional resources could help us in achieving the quality levels we believe are appropriate in this area, while continuing to permit us to deliver our services on a timely basis. Our operations would be enhanced by the addition of a few physicians and other professional staff who could assist Board Members in their review of appeals.

2. Please provide the current figures for "BVA Response Time on Appeals", as referred to in your testimony before the House of Representatives' Committee on Veterans' Affairs on October 6, 1987, and indicate how you calculated that time.

BVA Response Time on Appeals is a future oriented timeliness indicator that is limited in scope to the appeals processing steps that are the responsibility of the BVA. By taking into account the Board's most recent appeals processing rate and the currently pending volume of appeals that have completed the field processing stages and are awaiting BVA action (i.e., both at the BVA and in field stations), BVA response time projects the average time that will be required to render decisions on that same group of pending appeals.

Computation: BVA response time is computed by first determining the BVA's average daily appeals processing rate for a recent given time period. This can be simply determined by dividing the number of appeals decided by the calendar day time period over which those appeals were dispatched. For example, the BVA's average daily appeals processing rate for FY 1987 is determined as follows: 41,296 Appeals Decided/365 Days = 113 Appeals per Day. The second step in the computation of BVA response time is to determine the total volume of appeals that are currently pending and chargeable to the BVA. This volume consists of all appeals that are actually in process at the Board and those appeals in the field that have completed field processing steps and are pending transfer to the BVA. At the end of FY 1987, a total of 14,457 appeals were chargeable to the BVA. The total volume of appeals thus computed is then divided by the average daily processing rate to provide the BVA response time. As a formula, BVA response time can be represented in the following manner:

BVA Response = Total Appeals Chargeable to BVA/Avg. Daily BVA Processing Rate
Time on Appeals

BVA Response time for FY 1987 was computed as follows.

41,296 Decisions/365 Days = 113 Decisions per Day
14,457 Appeals Chargeable to BVA/113 Decisions per Day Processing Rate =
128 Day Response Time on Appeals

3. *Please provide the current estimate of the average amount of time that elapses from the filing of a Notice of Disagreement (NOD) to a final BVA decision.*

Average elapsed processing time for appeals decided during the first half of FY 1988 is broken down as follows:

Processing Stage	Responsible Entity	No. of Calendar Days
Receipt of Notice of Disagreement (NOD) to Issuance of Statement of the Case (SOC)	VA Regional Office	57 Days
Issuance of SOC to Receipt of Substantive Appeal (SA)	Veteran/Appellant	56 Days
Receipt of SA to Certification of Appeal to the BVA	VA Regional Office	165 Days
Receipt of Appeal to BVA Decision	BVA	134 Days
Total Elapsed Time		412 Days

4. Please provide current statistics regarding how long it takes on an average for a regional office to certify a case to the BVA once an NOD has been filed.

As indicated above in our response to question number 3, the average elapsed time between receipt of a NOD and certification of the appeal to the BVA was 278 calendar days for the appeals decided during the first half of this current fiscal year.

5. Please advise what type of and how much training new attorneys in your Appellate Index and Review System (AIRS) receive before beginning to review files for defects, and provide a copy of any guidelines provided to them to assist in determining whether there is a defect.

Attorneys are selected on a rotating basis for a detail lasting up to 16 weeks. At the time they begin to review the decisions, they are given written instructions which have been compiled by the Deputy Vice Chairmen and the Special Legal Assistant to the Chairman. These instructions have become a numbered memorandum and are now in draft form as part of the MBVA-1 manual. Copies of these instructions have been attached (Attachments 5.1 and 5.2). The purpose of this first step review is to filter the decision fairly rapidly and refer any decision with an error to the Deputy Vice Chairmen. The error may be simply typographical or as serious as the failure to have resolved an issue in the decision. These AIRS attorneys also provide decisions which do not contain errors to the Deputy Vice Chairmen. There are special types of decisions that the Deputy Vice Chairmen wish to review prior to their release and other decisions which are selected on a random basis for referral to this office. The actual review of the referred decision for substantive error is accomplished by senior attorneys in the Office of the Deputy Vice Chairmen.

6. A. How many opinions per year, in each of the last three fiscal years, were determined by the AIRS to be "substantially flawed" and, therefore, were sent to one of the two Deputy Vice Chairmen for review?

We do not have any information which would indicate the number of decisions with "substantial flaws". We have reviewed the weekly reports from the Appellate Index and Retrieval Staff (AIRS). These show the number of decisions referred to the Office of Deputy Vice Chairmen. This count, however, does not reflect the number of decisions with errors. These decisions were sent either because there were errors or they were a type of decision the Deputy Vice Chairmen wished to review. An attorney in AIRS may be of the opinion that there is an error in a decision but the Deputy Vice Chairman may not agree with this conclusion. The errors noted by AIRS attorneys may be typographical and not necessarily "substantial flaws". For FY 1985 the total number of decisions referred was 5,128, for FY 1986 the total was 7,125 and for FY 1987 the total was 7,645.

B. How many times per year, in each of the last three fiscal years, has a Deputy Vice-Chairman and the Chief member of a section reviewed a particular opinion together?

Normally, communication between a Chief Member and a Deputy Vice Chairman is accomplished with an exchange of notes. This occurs about once a week for each Appellate Group. Approximately six times a year, a Deputy Vice Chairman will personally meet with a Chief Member and discuss a case.

C. How many times per year, in each of the last three fiscal years, has a dispute between a Deputy Vice-Chairman and the Chief member of a section regarding a decision, resulted in the decision being changed?

The Deputy Vice Chairmen estimate that the dispositions of about twelve decisions a year are changed as a result of discussions with the Chief Members. The majority of these decisions were allowances. The BVA is developing a computer program which will more closely track the referrals to the Office of Deputy Vice Chairmen and monitor the number of errors and types of errors in decisions. The information in this response is the result of estimates provided by the Deputy Vice Chairmen and is not supported by documentation.

7. In each of the past three fiscal years, how many motions for reconsideration were filed, and how many were granted?

Fiscal Year	Reconsideration Motions Filed	Reconsideration Motions Granted
1987	431	294
1986	438	276
1985	471	300

8. A. Of the total number of cases remanded by the BVA in each of the preceding three fiscal years, what percentage were resolved at the Regional Office each year?

Fiscal Year	# of Remands	# of Remands in Which Benefits Were Allowed	% of Remands in Which Benefits Were Allowed
1987	8.564	1.781	20.8%
1986	7,897	1.731	21.9%
1985	7.395	1,779	24.1%

B. Of those, what percentage were resolved each year by a decision on the merits regarding the veteran's benefits and how many were resolved on other grounds?

When a case is remanded, it is diaried by the BVA Administrative Service. After 5 months, a letter is sent to the appropriate regional office requesting the status of the remand. The M1-1, Field Appellate Procedures, requires the remand to be completed in six months. The BVA maintains control of the remand. After the 6 month period has expired the BVA inquires as to the status of the pending remand every 3 months. All remands must be returned to the BVA for a final decision regardless of what occurs in the field, unless the appeal has been withdrawn or the entire relief sought by the veteran has been allowed in the field. In these situations, no further action by the BVA is required. There are no statistics on withdrawals during remand status, but withdrawals are most uncommon. If, for example, the appellant fails to report for a medical examination requested by the remand, the case must be eventually returned to the BVA, and a decision on the merits is made without the requested medical information. If there is a partial allowance made by the regional office, then the case must be returned to the BVA for adjudication of the issues not resolved.

9. Of the number of cases that return to the BVA after being remanded, what percentages are remanded a second time and a third time?

We are unable to provide a response to this question. Our information systems do not presently collect information that would provide statistics in this area.

10. A. For each of the last three fiscal years, what was the average, as well as the longest and the shortest, elapsed time from when a case was remanded to the Regional Office to when the claim was resolved at that level?

We are unable to provide a response to this question. Our information systems do not presently collect information that would provide statistics in this area.

B. For each of those years, what was the average, as well as the longest and the shortest, elapsed time involved from when the case was returned to the BVA to when the case was ultimately resolved?

The following data are approximate average elapsed time intervals between dates returned remands were received at the BVA and the dates of final decisions issued relative to those appeals. We have no information regarding the longest and shortest elapsed time intervals.

Fiscal Year	No. of Days Between Receipt and Decision
1987	112
1986	91
1985	90

11. What efforts, if any, are made within the BVA to ensure consistency of Board decisions?

The Board has several means of promoting consistency in Board decisions. One of the most important is the designation of jurisdictional specialties for the various sections of the Board. A vast range of medical and legal questions arises in the administration of veterans' benefit programs. While Board Members are well informed, it would be very difficult for each Board Member to make himself or herself an expert in all areas. To insure that a given case is addressed by Attorney Advisers and Board Members who are especially knowledgable in the area involved, each of the 21 Sections of the Board has been assigned one or more specialty jurisdictions. Examples of these specialty areas are gunshot wounds, special monthly compensation, prisoner of war claims, radiation exposure claims, "Agent Orange" exposure claims, loan guaranty cases, etc. (See Attachment 12 regarding Board issues, [illegible]) An important result of this system is consistency in the outcome [illegible] involving these specialized areas.

Another important avenue for promoting consistency in Board decisions is The Board of Veterans Appeals Index to Decisions (BVA Index I-01-1). By using this index, appellants' representatives can easily locate prior Board decisions in cases similar to a case they are presenting to the Board and draw the Board's attention to those cases which they feel support their point of view. The Board's Attorney Advisers can also research prior Board decisions to assist them in the preparation of tentative decisions.

Consistency is also promoted by the Board's quality review program. A number of cases are reviewed by the Deputy Vice Chairmen and their staff of senior attorneys as part of this program. (See answer to question No. 5.) Using this process, the Deputy Vice Chairmen have an opportunity to review a cross section of BVA decisions. There is an additional random sample consisting of two decisions from each of the Board's 21 Sections each week.

Through this quality review program, the Deputy Vice Chairmen gain an overview of the Board's decisions and are afforded an opportunity to spot inconsistencies. Any inconsistencies can then be brought to the attention of Sections of the Board so that they may be aware of any diversity with respect to a particular point of law.

Each of the Sections of the Board is made aware of important developments affecting decisions. Information is provided to Chief Members of the various Sections of the Board at weekly meetings with the Chairman. Important documents, such as opinions of the General Counsel obtained by the Board, are circulated in periodic bulletins. Of course, all Sections of the Board are promptly provided with information concerning changes in the law and regulations which govern veterans' benefits.

There will, of course, never be absolute uniformity in decisions. This is true not only of the Board, but of virtually all large appellate bodies. Particularly in cases involving diseases and injuries, the facts in one case will seldom--if ever--be exactly the same as the facts in another. Some Board Members will also be more liberal or more conservative than others. We realize that some degree of consistency is desirable, inasmuch as appellants and their representatives should be able to some extent to predict the outcome of a case on a given set of facts so that they may conduct their affairs accordingly. For example, in advising a claimant, representatives should be able to have some "feel" for whether a particular case has sufficient merit to warrant an appeal. Nevertheless, complete consistency is not necessarily desirable, inasmuch as absolute consistency could only be gained at the sacrifice of the independent judgment which is essential for equitable disposition of appeals. We believe that we have achieved a good balance between consistency of decisions and judicial independence.

12. Please describe the selection criteria for Board members, and for the Chairperson.

The procedure for the appointment of Board Members begins at the time that there is a vacancy at the BVA. The Chairman of the BVA notifies the VA office of personnel that there is a vacancy and that a notification should be sent throughout the VA announcing the position of Board Member. All applicants must complete a Centralized Staffing System Application package. Three parts of the package contain employment history and education, supervisor's assessment of the applicant's qualifications with respect to the rating factors and the applicant's narrative description of his/her qualifications as related to each of the rating factors. A copy of the seven rating factors is attached as well as a sample of the announcement and the application form. (See Attachments 12.1, 21.2 and 12.3.) After the applicants have filed their applications, they are reviewed by a panel consisting of a representative from the office of personnel, the two Deputy Vice Chairmen and the Special Legal Assistant to the Chairman. The applications are scored and ranked. A list is compiled of the higher ranking individuals by identifying a natural break in the scores. The Chairman is furnished a list of best qualified candidates. From this list he selects the individual he recommends for appointment. He then sends the list with his recommendation to the Administrator who selects an individual and ultimately makes the appointment. The tentative appointment is then forwarded to the White House for approval by the President.

The Chairman of the Board is a career reserve position in the Senior Executive Service (SES). When there is a vacancy, the position is announced in the same manner as any other SES position. Following the announcement applicants must fill out a statement setting forth their response to various KSAOs (Knowledges, Skills, Abilities and Other Characteristics) which are the rating factors which describe the qualifications for the position. These applications are reviewed by the Executive Resources Board and a nomination is presented to the Administrator who makes the selection. The current Chairman of the BVA, Kenneth E. Eaton, applied for the position of Vice Chairman according to the procedures described in this paragraph. At the time that the position of Chairman became available, he was reassigned to his current position. Attached is a copy of the rating factors and announcement for BVA Vice Chairman and the qualification standard for the Chairman. (See Attachments 12.4, 12.5 and 12.6)

12. A When it becomes necessary to expand a particular panel, what criteria are used to select the new members?

The Chairman expands panels in two situations:

1. A dissenting opinion and
2. A reconsideration of a prior BVA decision.

In the first instance, there is a dissenting opinion and the Chairman decides not to vote with the majority. The regulations require that the Chairman expand the panel. He prefers to accomplish the panel expansion and completion of the final decision as quickly as possible. Therefore, he must consider the availability of the Board Members in a particular section. For example, one of them may be out on Travel Board or on vacation or sick leave. This would interfere with a timely resolution of the dissent. The second situation involves a reconsideration with allegations of error in a prior BVA decision. Timeliness is not usually as much a factor in this situation. In both instances, the Chairman considers the expertise and specialty jurisdiction of the particular Board Section, as well as any workload difficulties a Section may be facing.

B. What opportunity is there for recommendations from either the existing panel or the members under consideration for appointment to that panel as to whom will be appointed to the expanded panel?

None. Normally the Deputy Vice Chairmen see those decisions with dissenting opinions or reconsideration requests before the Chairman sees them. They may recommend an expanded panel and sometimes will recommend the participation of particular Board Members.

C. Is there any method for the claimant to challenge the Chairman's choice of individuals for an expanded panel?

No.

D. Please provide the number of times in each of the last three fiscal years that a panel has been expanded, as well as information as to the size of each expanded panel.

There is no information available. We do have the following limited information: In Calendar Year (CY) 1985 there were 48 dissenting opinions, 30 allowed, 17 denied, and 1 remanded. In CY 1986 there were 56 dissenting opinions, 30 allowed, 26 denied and 0 remanded. In CY 1987 there were 68 dissenting opinions, 34 allowed, 33 denied, and 1 remanded. We have no specific information as to the size of the panels for 1985 and 1986. We have no information concerning the size of Reconsideration panels when there has not been a dissenting opinion. During CY 1987 there were 11 reconsiderations involving dissenting opinions. Of those, three panels were comprised of twelve Board Members and the remaining panels were composed of six members.

14. A. Is any consideration given to matching the specialty and/or experience of the physician on a panel with the medical condition involved in a given case.

Yes. Physicians with particular specialties are not always available for the Board to hire. Therefore, we have been unable to match physician's specialties with Section jurisdictional specialties in all cases. Within this limitation, consideration is given to specialties when assigning physicians to Board Sections. We have a specialist in internal medicine and hematology assigned to the Section which considers AIDS cases, a specialist in industrial/occupational medicine assigned to a Section which considers cases involving whether total (i.e., 100 percent) evaluations based upon the unemployability of a particular veteran were properly terminated by the agency of original jurisdiction, a specialist in radiology assigned to a Section which considers radiation exposure claims, a specialist in pulmonary medicine assigned to a Section which considers asbestos exposure claims, a specialist in thoracic and vascular surgery assigned to a Section which considers gunshot wound cases, a neurologist assigned to a Section which considers cases involving neurological illnesses and injuries, a specialist in internal medicine assigned to a Section which considers claims brought under the provisions of 38 U.S.C. 351, and a specialist in ophthalmology assigned to a Section which considers cases involving eye diseases and injuries.

B. What percentage of cases are heard by a panel with at least one doctor whose area of specialization covers the medical condition involved in the case being heard?

We do not have a data base which shows exactly which physician signed each decision involving an issue related to a particular medical specialty. Based upon current Board Section assignments, we have a match between Section specialties and physicians' specialties in eight Sections of the Board. (See the response to question No. 14A.) It is important to note that the Board regularly distributes a list of all Medical Members of the Board and their specialties to all Sections of the Board. (See Attachment 14B showing the specialties of BVA physicians.) Thus, Medical Members are aware of the specialized medical knowledge available at the Board and may consult with their colleagues when expertise in a particular area is required. The Board is fortunate to have a wide variety of specialists available for consultation. In addition, the Members of the Board, as well as the Attorney Adviser staff, have access to a small medical library maintained by the Board and to an extensive nearby medical library maintained by the Veterans Administration Department of Medicine and Surgery. Medical Members of the Board are also free to consult with the various specialists employed by the Department of Medicine and Surgery. Finally, it is important to note that the great majority of cases considered by the Board involve very common diseases and injuries which are well known to the general medical community and which do not require specialized knowledge to address fairly.

C. In situations in which a panel is being expanded, is there any special consideration above and beyond that described in your answer to subpart B. given to matching the specialty and/or experience of the physician on a panel with the medical condition involved in a given case?

Yes. If the issue under consideration involves an unusual question relating to an area of specialized medical knowledge, the specialty of the physician is given consideration in choosing the Section, or Sections, of the Board to be included in the expanded panel.

15. Subsequent to the House Veterans' Affairs Committee's October 6, 1987, hearing on the operation of the BVA, the VA submitted information indicating that the BVA will "continue the investigations that have already been initiated in the reasons underlying the recent trends of increasing rates in BVA remand decisions."

A. What progress has been made in that study?

We initiated our examinations in this area in response to a written inquiry dated September 3, 1987, from the Chairman of the House Veterans' Affairs Committee to the Administrator of Veterans' Affairs. The Administrator had directed the VA Chief Benefits Director to prepare a response to Chairman Montgomery's inquiry, and the Chief Benefits Director had, in turn, requested input from the BVA to be used in the VA reply. We conducted our initial examinations, and provided the results of these examinations to the Chief Benefits Director in a memorandum dated September 17,

1987. Copies of Chairman Montgomery's original inquiry, the Chief Benefits Director's request for input from the BVA, and the BVA response conveying the results of our initial examinations are provided in Attachment 15A.

B. What are your current findings?

During the course of the 10/6/87 BVA oversight hearing conducted by the Compensation, Pension and Insurance Subcommittee of the House Veterans' Affairs Committee, Mr. Applegate requested that the BVA Chairman, Mr. Eaton, work with the Chief Benefits Director, Mr. John Vogel to "pinpoint reasons for increased remand rates and to work out some reasonable compromise or workable solution to it." The VA provided the following formal response to Mr. Applegate's request: "The BVA will continue the investigations that have already been initiated into the reasons underlying the recent trends of increasing rates in BVA remand decisions. As requested by Chairman Applegate, Mr. Eaton plans to meet with the Chief Benefits Director to lay the ground work for joint efforts between the Board of Veterans Appeals and the Department of Veterans Benefits to resolve this situation."

After some discussions between the Department of Veterans Benefits (DVB) and the BVA on this issue, it was decided that DVB would conduct an examination into this matter. The BVA provided DVB a listing identifying all remand decisions issued during FY 1987, and DVB selected a random 5% sample of these cases for a review that was performed by a group of DVB field station personnel. These individuals reviewed the claims folders pertaining to the cases selected in the 5% sample to determine whether, in their judgment, a remand was the appropriate disposition in each of these cases. A report on this study is being prepared and we will forward a final version of this study when it is released.

16. A. Who ultimately decides which Board Members receive cash bonuses for exceeding the production quotas and how much those bonuses will be?

The Chairman has chaired a meeting of the Awards Committee once a year when entitlement to Awards or bonuses have been discussed and decisions made. The participants were the Chairman, Vice Chairman, Deputy Vice Chairmen, Special Managment Assistant, Special Legal Assistant, Executive Assistant and the Personnel Officer.

B. Please describe the process for reaching those decisions?

See response under D.

C. On what basis are these bonuses awarded?

See response under D.

D. In FY 1987, what were the lowest criteria for production and quality for which bonuses were awarded and what were the highest?

Refer to the answer to question No. 30 for the information concerning attorney advisers. With respect to the Board Members, all those Board Sections who had realized their annual goal of completed decisions were considered eligible for a bonus or award. Among the eligible sections, the per cent over goal was reviewed and these sections were further divided into several tiers, usually from three to four. Each of the tiers represented a particular per cent of salary bonus. This ranged from approximately four to one per cent.

The period of time evaluated for the purpose of these awards was from April 1 to March 31. According to BVA policy an eligible employee could not receive a cash award in two succeeding years. The individual could receive a commendation or other written certificate from the Chairman in lieu of a cash award for performance in the intervening year.

E. S. 2292 proposes the elimination of bonuses for BVA members, but not staff attorneys, presumably in order to remove incentives for too much haste in decision-making. Please comment on these provisions and your estimate of its likely effect on BVA operations.

There will be no bonuses awarded to Board Members this year. Therefore, S. 2292 would have no impact upon BVA operations.

17. A. How are case-processing time standards set?

There are no case-processing time standards set for Board Members, other than the goal of 40 signed decisions a week per Section. As for staff attorneys, case processing time standards have been established using work measurement and work sampling study techniques. The first work measurement study of this nature was conducted in 1958. This study determined the average time it took an attorney to complete a decision involving a particular appellate issue. Based upon these findings, cases were weighted by issue according to the complexity and amount of attorney time required to complete the decision. These standards were revalidated in 1962 and 1965 using statistical analyses of work samplings and a limited elapsed time study. In each instance in which case processing time standards were officially reviewed, internal BVA committees composed of BVA management officials, Board Members and staff attorney representatives were established to participate in the review process.

B. When was the last time a time study was done to determine how much time it takes, on the average, to process various types of claims at the BVA?

The most recent study of this nature was completed in 1984.

C. Please provide copies of the information provided to the BVA staff attorneys and Board Members regarding how much time each type of case is to be allotted, as well as how much credit is received for closing or remanding a case.

BVA information made available to BVA staff regarding performance measurement system case processing time standards is included in the BVA manual MBVA-1, Part I, Chapter 3. We have included those portions pertaining to BVA Professional Service staff in Attachment 17C.

18. The Vietnam Veterans of America (VVA) has alleged that Chief Board members play favorites by assigning the thinnest and usually easiest cases to certain senior attorneys, thereby allowing such attorneys to increase their production numbers. What system, if any, is in place to reduce the possibility of a Chief Board member playing favorites by assigning a majority of the so-called "blades" (the thinnest and usually easiest cases) to certain senior attorneys for opinion writing?

A practice such as that described is contrary to Board policy and Board management would never condone such a practice. Of course with over 40,000 cases being assigned annually, there will inevitably be some instances in which cases are assigned in a manner that is contrary to Board policy. Should it be shown that any Member of the Board were engaged in such a practice, remedial action would be promptly taken.

Besides being contrary to Board policy, such a practice would be counter productive. There is therefore a built-in incentive not to follow such a practice. From the prospective of Board Members, it is far better to assign the more difficult cases to the more experienced attorneys. If difficult cases were assigned to inexperienced attorneys, the tentative decisions produced would undoubtedly be unacceptable and would require a great deal of time to revise. The work load of the Board Members would thereby be greatly increased. The reputation of the Section would also suffer, inasmuch as the time that cases remain in the Section would lengthen and the total number of decisions a Section could release in a given period of time would decrease.

It is clear that GS-9 and GS-11 attorneys with one to two years experience should prepare tentative decisions on the more basic issues. After this point, an attorney strives to show proficiency in complex medical and legal matters. Opportunities arise since the Section must complete the work at hand and a specific mix of complexity cannot be guaranteed. Not only GS-14 senior attorneys but also GS-13s are expected to work on the most difficult cases. In order for GS-13 attorneys to demonstrate their ability and suitability for promotion, they must show excellence in handling these cases.

The Chairman appointed an advisory committee to study the assignment of cases to Board attorneys in March 1986. The committee included two Board members, two attorneys, and the Board's Assistant Director of Administrative Services. After the committee's recommendations were received, the Chairman established new procedures for case assignment in August 1986. Under these procedures, only the Chief Member has the responsibility for assigning cases to Attorney Advisers (except for Travel Board cases which are assigned by the Board's Travel Board Secretary). He or she may delegate this task to the Law Member of the Section, but still retains responsibility. The Chief Member, or Law Member, must annotate the administrative record which accompanies the case (a "brieffface") to show the date the case was assigned and initial the record. The Attorney Adviser signs this record and inserts his or her number on the record when a tentative decision is submitted to the Board. (This must be done accurately or the Attorney Adviser will not get credit for the case.) There is therefore an administrative record showing to whom a case was assigned and who made the assignment. The fact that there is such a record also serves to discourage unfair assignment practices.

Finally, it should be pointed out that a thin record does not necessarily mean a simple case and a thick record does not necessarily mean a difficult case. Often the opposite is true.

10. A. The VVA has alleged that there is an informal system known as "courtesy signatures," whereby Board members regularly trade signatures to make it appear that all three members reviewed the file before reaching a decision. To your knowledge, does such a system exist or has it ever existed?

The term, "courtesy signature," is a misnomer in that no Board Member signs a decision simply as a courtesy. The Board is divided into 21 Sections with three Board Members each, all of whom review and sign the decision. A "courtesy signature" refers to the practice of obtaining a third Member review of a decision when a Section does not have its full complement of three Board Members due to an absence or vacancy of one of its Members. In such a situation, a Board Member from another Section is asked to review the case. Such review is a "courtesy" in that the case is not assigned to the Section of the third Member being asked to perform a review. VVA has alleged, in effect, that this third review is cursory at best and results in a decision which did not receive proper consideration.

I should like to point out that each decision issued by the BVA has received a third review, either by a Board Member who is a regular Member of the Section reviewing the claim or by a Board Member from another Section taking the place of an absent Member. No Board Member is ever required to review any appeal in a time shorter than his or her conscience feels is the proper time. Although the length of time required for a third review may be brief, such review may also require a very lengthy study of the appellate record. The time required for a third review depends on many factors. If the case involves a medical issue and has already been thoroughly reviewed by a physician, then the third review by an attorney might not need to be as full as would be the case if the issue were strictly of a legal nature. The situation occasionally arises in which a case involves an issue which has been thoroughly reviewed by a Section physician or attorney, depending upon whether the issue is medical or legal in nature, and who has made extensive revisions to the proposed decision. While the decision is being put into final form with the revisions, it may happen that the physician or attorney who initially reviewed the case goes on Travel Board or on leave. In such an instance, another Board Member may be asked to sign the decision so as not to delay the appellate process. As the case has already been thoroughly reviewed and revisions and corrections made, the third review need not be as complete as would usually be the case. The third reviewer also would normally take into consideration the expertise and experience of the previous reviewers, the known competency of the Attorney Adviser who performed the initial review and drafted the proposed decision, the complexity of the issue or issues involved and the third reviewer's familiarity with those issues. It is rare for a Member substituting for an absent Member to be asked to review a very complex or controversial decision for another Section. It is expected that the third review will be as complete as is necessary to reach a sound decision, and we rely on the professional good judgment of the individual Members of the Board to determine how thorough such review must be.

It should be noted that 38 U.S.C. 4002 provides that when there are fewer than three Members as a result of absence or vacancy the Chairman may direct the Section to proceed without awaiting the assignment of an additional Member. It is the current policy to have three Members sign each decision, even when there are vacancies in several Sections of the Board. Incidentally, I am currently urging all Board Members to make sure that the review by the third Member is a full review, and I have also issued a numbered memorandum reiterating this policy (see Attachment 19A).

B. What system, if any, is in place to ensure that all of the Board members who sign a decision have actually read and analyzed the file before signing?

Our Board Members are professionals who are well versed in reviewing these cases. All of our physicians have years of medical experience before they reach the Board. An attorney generally has at least 7 years of experience reviewing cases and drafting decisions before becoming eligible for appointment to the Board. Many appeals involve simple, straightforward factual issues which do not require a great deal of time for our experienced personnel to review. All Board Members must make decisions as to the depth of review required. Each appeal undergoes a "first review." (See response to question 29). A Board Member experienced in the subject matter of an issue may require only 20 minutes to review a one-issue case, while the next case before him may require several days of analysis. There is no basis for questioning the integrity of our Board Members with respect to the length of their review of cases. We must trust the professional judgment and ethicality of our Board Members in the performance of their jobs.

20. A. The VVA has also alleged that a formal "Chairman's Signature List" exists. Does such a list exist, and if so, what is its function and origin?

As Chairman of the Board I have issued such a list. This list has nothing whatsoever to do with the determination reached by the Board in any given claim. Cases are referred to the various Board Sections either randomly or because the issues include a special jurisdiction which has been assigned one or more Sections. All final decisions, signed by three Board Members, are processed through our quality control system and reviewed for errors. Certain sorts of decisions are referred to me for review before being dispatched. These decisions include reconsiderations, decisions in which a Member has dissented from the majority, administrative allowances and decisions in cases in which interest has been expressed by an individual on my personal signature list. A letter of transmittal accompanies a copy of each decision in a case where there has been congressional interest expressed. If the Congressman is on my personal signature list, this letter of transmittal is personally signed by me. I wish to emphasize that the decision in the case, whether an allowance or a denial, has been made before the decision reaches me and my final review is not a substitute for Board Member judgment. It is simply a courtesy to Members of Congress that I personally review the decision and sign the letter of transmittal. The list includes Members of the Senate and of the House Veterans' Affairs Committees. These committees are charged with oversight responsibility of the VA and it is these Congressmen who are most likely to contact me with reference to BVA matters. Thus, I make an effort to keep informed of matters in which the Members of these committees are involved. In addition to reviewing decisions in which they have expressed an interest, I also insist on seeing all other material prepared as a result of congressional interest or in which such interest has been indicated. It is one more method to keep myself informed of the concerns of those Members of the Congress most deeply involved with VA affairs.

B. If it exists, please provide a copy of the document setting it forth and describe what different process exists for the consideration of cases which would come under the list.

The fact that I have requested to see certain cases in which an interest has been expressed by the individuals on my personal signature list does not impact upon the judicial process and these cases do not receive any special or preferential treatment. I simply perform the final review and sign the transmittal letter. As with all decisions which I have the opportunity to review, I expect the decisions going to Congressmen to be free from error. If I find typographical errors, or if I believe that the arguments should be more clearly stated or elaborated upon, I may well send it back to the Section and ask that the Board Members take another look at it. However, my comments in this regard have to do with the decision as a written product and do not address the outcome or how the Members voted. I am attaching copies of this list (Attachment 20B) as distributed for the last three years.

21. A. In each of the last three fiscal years, in what percentage of the cases reviewed by the BVA were Independent Medical Opinions (IMO's) solicited?

This question, as stated, does not lend itself to a simple answer. The BVA tracking system is oriented to cases decided as opposed to cases reviewed, which we would interpret to include cases that have come before the Board but have not yet been decided. The numbers of Independent Medical Expert Opinions (IMEs) requested for the past three fiscal years are as follows:

Fiscal Year	No. of Independent Medical Expert Opinion Requests
1987	138
1986	191
1985	195

B. In what percentage of cases in which IMO's were obtained were benefits granted?

Fiscal Year	Percent of Cases Involving Independent Medical Expert Opinions Where Case was Allowed by BVA
1987	38.2%
1986	35.8%
1985	33.8%

C. What criteria are used in making a decision whether to request an IMO and who makes that decision?

Board Members generally make that determination. A request for an IME is considered a formal motion and, in denying the request, the Board Members must make Findings of Fact and Conclusions of Law as with all issues adjudicated. The denials of IME's are also reviewed by the Deputy Vice Chairmen. Attached is a copy of the procedures on denying IME requests from MBVA-1 along with the Board's instructions on this matter over the last three years. (See Attachment 21C.) The Chairman reserves the right to authorize a request for an IME at any time.

D. What, if any, procedure exists for the claimant to appeal or otherwise be heard with regard to a BVA decision not to seek an IMO?

None. A BVA decision is final, including the determination not to seek an expert medical opinion. The appellant and/or representative could write to the Chairman and ask him to request such an opinion notwithstanding the BVA decision.

E. In what percentage of cases are claimant's specific requests for IMO's denied?

Fiscal Year	% of Independent Medical Expert Opinion Requests Denied
1987	12.1%
1986	9.5%
1985	Insufficient information available regarding IME requests denied in FY 1985

22. A. What efforts, if any, are made by the VA to ensure -- either at the Regional Office or at the BVA hearing -- the presence of witnesses whose appearances have been identified by the veteran as necessary for his or her case?

The VA does not make any efforts to procure witnesses. It is up to the appellant and his or her representative to identify the witnesses they desire and secure their presence. As the hearing is a nonadversarial proceeding, the only witnesses are those heard on behalf of the appellant.

B. In each of the last three fiscal years, in what percentage of the cases reviewed by the BVA did the VA use its subpoena power to secure the testimony of a witness?

In no case did the VA use its subpoena power for this purpose.

C. If a veteran requests the VA to use its subpoena power to secure the presence of a necessary witness, what criteria are used to determine whether to grant the veteran's request?

We have not done this. However, according to 38 C.F.R. 2.1(a), discretion will be used in the exercise of this power which will not be used except when necessary or when the evidence cannot be obtained efficiently in any other way.

23. In each of the past three fiscal years:

A. What was the average length of a BVA hearing?

The following information pertains to the average length of formal BVA hearings conducted in Washington, DC. These times only reflect the length of that portion of the total hearing process that constitutes the official record. The approximately 15 minutes of general remarks at the beginning and closing of each hearing are not included in these figures. We do not have data pertaining to the average length of BVA Travel Board hearings.

Fiscal Year	Average Length of BVA Hearing (in minutes)
1987	39
1986	38
1985	37

B. What percentage of the claimants whose cases were decided by the BVA, either on the merits or remanded, had a hearing?

Fiscal Year	Type of Hearing	No. of Decisions	% of Total Volume
1987	BVA Wash., DC	1,285	3.1%
	BVA Travel Board	739	1.8%
	Field Rating Board in lieu of BVA	10,684	25.9%
	Total, All Hearing Types	13,993	33.9%

1986	BVA Wash., DC	1,392	3.3%
	BVA Travel Board	744	1.8%
	Field Rating Board in lieu of BVA	11,019	26.2%
	Total, All Hearing Types	13,155	31.3%
1985	BVA Wash., DC	1,425	3.1%
	BVA Travel Board	761	1.7%
	Field Rating Board in lieu of BVA	11,392	25.2%
	Total, All Hearing Types	13,578	30.0%

24. A. Although the formal policy is that a BVA hearing is available to any claimant, on any issue, at any time, are there more restrictive informal rules or practices which, due to limited resources, are followed in order to reduce or which have the effect of reducing the numbers of hearings conducted?

The BVA has no procedure which would discourage a hearing. If the appellant checks the box on the 1-9 indicating that a hearing is desired, a hearing is scheduled. If there is a question as to whether a hearing is desired, the appellant is sent a letter to clarify his or her intent. After a hearing is scheduled, a letter of confirmation is sent to the appellant. If there is no response made to the letter of confirmation, it is assumed that the appellant will be present at the hearing. Hearings are scheduled at least three months in advance. A large number of hearings scheduled at the Board do not take place because the appellant either cancels his appearance the week of the hearing or simply fails to show up. Weekly Activity Reports from January 7, 1988 through May 27, 1988 show that an average of 8 hearings a week did not take place due to the failure of the appellant to appear or due to a late cancellation.

B. Why doesn't the VA form 1-9, which is used by the claimant to file an appeal to the BVA after the notice of disagreement, include a box for the veteran or his or her representative to request a hearing before a traveling section?

While an appellant has a right to a hearing, there is no right to a hearing before a Travel Board. However, BVA Rule of Practice No. 60, 38 C.F.R. 19.160, regarding the location of a hearing on appeal, provides that a hearing may be held before a section of the Board of Veterans Appeals in Washington, D. C., before appropriate personnel in the VA regional or other office or, to the extent scheduling permits, before a traveling section of the Board of Veterans Appeals during regularly scheduled visits to VA facilities. Thus, although the law does not require traveling Sections of the Board to conduct hearings, as a matter of comity, we have volunteered a limited Travel Board program which is completely budget dependent. Scheduling varies, and not all regional offices are visited. We feel that it is not appropriate to further encourage appellants to seek hearings before Travel Boards due to our inability to assure that such requests could be granted.

25. Please provide copies of the job description(s) for the BVA's staff attorneys.

See Attachments 25.1-25.12)

26. A. What process exists to ensure that claimants are informed of the availability of personal appearances before traveling BVA sections and of the traveling sections' schedules?

Information regarding Travel Boards are set out in MBVA-1, Parts II and III, and in M1-1. Copies of the pertinent pages from these manuals are labeled Attachments 26.1 and 26.2. You will note that field offices are notified 6 months in advance of a scheduled visit of a Travel Section. Field Office Directors are instructed to notify in writing all interested persons, including adjudication personnel and service organization representatives. Hearings before that Travel Board are scheduled during this 6-month period. Also see the following documents which are included as Attachments 26.3, 26.4 and 26.5. Copies of BVA Rules of Practice 57 through 71 regarding hearings, the Chairman's Numbered Memorandum 01-88-26 entitled Procedures and Instructions for Traveling Board Sections, and VA Pamphlet 1-1, Appendix IV, showing field offices visited, the frequency and the time of year.

B. What percentage of cases decided in each of the past three fiscal years by the BVA involved hearings before a traveling section?

Please refer to our response provided to question 23B above.

C. Of the cases heard before a traveling section in each of those years, what percentages are granted, denied, and remanded? Please compare these percentages with those cases decided in each of those years without a hearing and those decided with a Washington, D.C., BVA hearing?

Fiscal Year	Type of Hearing	Allowed	Denied	Remanded
1987	BVA Wash., DC	19.5%	55.1%	24.1%
	BVA Travel Board	30.6%	46.8%	21.1%
	No BVA Hearing	12.2%	65.8%	20.6%
1986	BVA Wash., DC	16.4%	56.9%	23.5%
	BVA Travel Board	28.9%	52.3%	18.0%
	No BVA Hearing	12.3%	67.8%	18.7%
1985	BVA Wash., DC	20.2%	57.7%	21.1%
	BVA Travel Board	34.6%	47.4%	17.0%
	No BVA Hearing	12.7%	70.1%	16.2%

27. A. Does the BVA have authority to dismiss a claim for failure by the claimant to state adequately the error(s) he or she believes were committed at the Regional Office level?

The BVA does not dismiss a claim on this basis. However, 38 U.S.C. 4005(d)(5) provides the following: "The Board of Veterans' Appeals will base its decision on the entire record and may dismiss any appeal which fails to allege specific error of fac or law in the determination being appealed." (See also BVA Rule of Practice 26, 38 C.F.R. 19.126, as follows: "Appeals which fail to allege specific error of fact or law in the determination being appealed may be dismissed. The appellant and/or representative will be notified of the dismissal action.")

B. Please cite the authority and provide data, for each of the last three fiscal years, showing what percentage of cases appealed to the BVA were dismissed for failure by the claimant to state (or state adequately) the errors committed at the Regional Office level?

See response to "B" above. The BVA does not dismiss a case on this basis.

C. What are your views on providing the BVA with a statutory direction to resolve such claimed errors even though the alleged error was not raised at the Regional Office?

See response to "B" above. Such a directive would have no effect on our practices since we do not dismiss such cases.

28. A. Do the rules under which BVA operates provide that any factual contention put forth by the Regional Office, and not rebutted by the claimant, is deemed admitted as a fact?

Yes.

B. If so, please provide the text of the rule.

38 U.S.C. 4005(d)(4) provides the following: "The appellant will be presumed to be in agreement with any statement of fact contained in the statement of the case to which no exception is taken." In accordance with this legislation, BVA Rule of Practice 21, 38 C.F.R. 19.121(b)(3), provides the following: "The appellant is presumed to be in agreement with any statement of fact contained in a statement of the case to which no exception is taken." See also BVA Rule of Practice 80, 38 C.F.R. 19.180(a).

In practice, the Board does not require that a veteran contest every contention put forth by the Regional Office, and an appellant is not prejudiced if he or she does not contest an item set forth in the Statement of the Case. The Board presumes that the appellant is not in agreement with contentions made in the Statement of the Case unless he or she indicates such agreement. We do not assume such concessions on the part of the appellant.

C. Do the rules under which BVA operates provide that any legal contention put forth by the Regional Office, and not contested by the claimant, is deemed to be controlling?

No.

D. If so, please provide the text of the rule.

See response to C.

29. There have been allegations that, due to time pressures, some Board members and their staffs read only the top face sheet of the claim before reaching a decision. What efforts, if any, are made to ensure that Board members and their staffs read a claimant's entire claim and do not "top sheet" a case?

It would be difficult indeed for an Attorney Adviser to get by with the practice described for very long.

By way of background, in the course of reviewing a tentative decision, at least one of the three Board Members in a Section will review the appellant's Veterans Administration records in depth in order to insure that the summary of the evidence and contentions recited by the Attorney Adviser in his or her tentative decision is accurate and complete. Any required additions and corrections are made by the initial reviewer during this "first review". This allows a division of labor and insures that the second and third Members who review the decision have an accurate picture of the evidence and the contentions readily available in the body of the tentative decision. The second and third Board Members also have the basic file at hand and refer to it to the extent they deem necessary when conducting their own review.

The accuracy of reporting this information is a factor on which the attorney is evaluated and that evaluation, in turn, plays an important role in determining whether the Attorney Adviser is promoted. We would assume that the reference to "the top face sheet" is a reference to a field Rating Decision or Waiver Decision or to the Statement of the Case, inasmuch as these would normally be the only documents in the record outlining the evidence in a case. In most cases, the summary of the evidence and contentions in the Rating Decision or Waiver Decision and Statement of the Case is much briefer that the summary included in Board decisions. If an Attorney Adviser were to use Rating Decisions or Waiver Decisions or Statements of the Case rather than source documents to prepare tentative decisions, that would soon become apparent in the course of the review process previously described. Such behavior would not be tolerated.

Aside from the fact that Board Members take pride in the quality of their work and in treating appellants fairly, it would also soon become obvious if Board Members were to follow such a practice. Such a deficiency would show up in the analysis of decisions which pass through the Board's Office of Quality Review (see response to question 11), as well as in complaints and requests for reconsideration from appellants based on incomplete or inaccurate decisions.

30. What "bonuses" or other financial incentives, if any, are awarded to staff attorneys, through what process, in what monetary range, by whom, and on what basis?

Staff attorneys are eligible for "bonuses", or incentive awards, under BVA practices and consistent with the OPM incentive awards program. Two types of monetary awards are typically involved: (1) either a cash sum representing a percentage of annual salary or a quality increase (a within-grade step increase) awarded for sustained superior performance; or (2) a fixed sum cash award presented for some special contribution to the Board's operations.

The awards process commences following the conclusion of the attorneys' evaluation year which currently ends on March 31. After performance evaluation information has been assembled for all Professional Service staff subject to evaluation, the BVA Chairman meets with the BVA Awards Committee to discuss awards decisions. The Awards Committee consists of the Chairman, Vice Chairman, both Deputy Vice Chairmen, Executive Assistant, Special Legal Assistant, Special Management Assistant, and Personnel Assistant. Attorneys are eligible for sustained superior performance awards if they received an "outstanding" rating during the preceding evaluation year, if they had worked at the Board at the same grade level throughout the preceding evaluation year (i.e., had not received a promotion to a higher grade level or were not newly hired during the preceding year), and if they had not received a sustained superior performance award during the previous year. From this group of eligible attorneys, the Awards Committee selects their recommendations for sustained superior performance awards based upon the attorneys' productivity and quality achievements during the evaluation year. While no upper or lower limits are fixed as to the number of such awards, typically bonuses will be awarded to those otherwise eligible attorneys whose achievements rank them in the top 30% to 50% of their grade level peers. The Chief Members of the Board Sections to which the attorneys selected for sustained superior performance awards are assigned are then advised of the selections and are afforded the opportunity to concur or disagree with the selections, based upon their supervisory roles. After all of these processes have been completed, the BVA Chairman will then ultimately make the final decision regarding each individual award. Dollar amounts awarded to 15 staff attorneys for sustained superior performance during the evaluation year ending March 31, 1987, ranged from $946 to $2,197 and averaged $1,510. Special contribution awards for BVA staff attorneys generally recognize services provided in some capacity other than the normal staff attorney role. These fixed sum cash awards are typically in the $250 to $500 range, and they are made in recognition of exceptional services rendered relative to BVA details such as AIRS indexing and editing operations or quality review operations under the offices of the Deputy Vice Chairmen.

31. Currently, is there any time limitation as to how long a Board member may serve on the Board?

No.

32. What proportion of current Board members previously served as Board staff (please break this down separately for attorneys and physicians)?

Of the 42 attorney Board Members, two were not employees of the BVA prior to their appointment. Of the 13 medical Board Members, one of them was a former BVA employee prior to her appointment to the Board. It should be noted that all physicians who are currently appointed to the Board served approximately one year as a medical adviser and/or acting Board Member prior to their appointment.

33. A. Do you feel that the BVA is equipped and qualified to rule on the correctness of agency interpretations of its regulations and of applicable law?

Assuming that there is a grant of authority to establish a specialty section to decide these issues, the BVA is qualified to rule on the correctness of interpretations of regulations.

B. What would be the impact on timeliness of decisions if the BVA were given such a role?

BVA rulings with respect to agency regulations would only affect the timeliness of decisions in those appeals in which there was a challenge to the regulations. With a specialty section performing the major tasks with respect to these appeals and assuming adequate resources to support this group, the regular operations of the Board Sections concerned with other decisions would not be affected.

DUE TO THE LARGE NUMBER OF ATTACHMENTS

AND THE HIGH COST OF COPYING

THE ATTACHMENTS WERE NOT DUPLICATED

BUT WILL BE KEPT IN THE COMMITTEE'S FILES

PVA

PARALYZED VETERANS
OF AMERICA
Chartered by the Congress
of the United States

June 2, 1988

The Honorable Alan Cranston, Chairman
Senate Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

ATTN: Elizabeth Buechler

Dear Mr. Chairman:

I am pleased to respond to your pre-hearing questions regarding the operations of the Board of Veterans Appeals (BVA). I have numbered our answers to correspond with the questions as proposed in your letter.

1.A. Bonuses and production quotas may indeed be perceived in a negative manner. Such perceptions may likely result in an environment of mistrust or, at the very least, raise questions regarding the Board's thoroughness and fairness. We do not feel, however, that "production quotas" have actually compromised the quality of work at BVA.

PVA believes that production quotas can serve to set goals within each panel (section) but do not necessarily compromise quality. If this was a major factor, we would expect to see significant increases in production in excess of the quota in only those years in which a section was eligible for the bonus. Based on our experience, it does not appear that sections "take advantage" of this management technique. The quality review of the work produced is still a very valid consideration in awarding bonuses. The quality of the decisions rendered by a section must be defensible from a legal standpoint and must, therefore, withstand the bonus committee's review. In any case, the rights of an individual veteran are of utmost importance and in no instance should ever be compromised by production quotas. PVA vehemently rejects any management technique which would negatively affect the quality of BVA decisions.

In lieu of production quotas which may be perceived in a negative manner, we suggest consideration of an across-the-board increase in BVA salaries or an expanded number of Board members.

B. There is obvious inconsistency in regard to Board members being excluded from the Performance Appraisal System and the Merit Pay System and, at the same time, being eligible for performance bonuses. As you have

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pointed out, the purpose of exclusion from such systems is to avoid any appearance of the members being influenced by performance evaluations and merit pay. Since the appearance of the Board's judicial integrity is a valid concern, this inconsistency merits criticism.

C. As with any controversial issue, we must consider to what degree perceived notions negatively affect the ability of the Board to carry on its mission in an efficient manner. As we have previously stated, we do not believe that production quotas have adversely affected the operation of the BVA nor do we feel that rewarding an employee for excellent performance is wrong. We do believe, however, that the elimination of the use of bonuses may very well result in a more positive perception of the Board.

2.A. Regarding remands, we must initially note that there were fewer full Board sections in 1984 working a higher number of total cases. More cases were denied in 1984 than in 1987 (70.4% versus 65.1%). The increase in the number of remands may be due to 1) more Board members being able to detect both substantive and procedural errors and 2) more requests for remands by service organizations at the appellate level due to the decrease in quality of development at the Regional Office level. Reductions in DVB FTEE over the past decade have been largely responsible for declines in Regional Office quality and timeliness.

B. We believe that remands generally operate to the benefit of individual claimants and reflect full due process. Obviously, Regional Office errors that result in BVA remands are very time consuming. Nevertheless, since more cases were denied in 1984 than 1987, we must surmise that the increase in remands has generally benefitted claimants.

C. We do not believe that the retention of BVA jurisdiction during the remand process would necessarily reduce delays. Delays generally occur at the Regional Office level during time consuming development. Retention of jurisdiction would also essentially require the BVA to rule on evidence not yet considered at the Regional Office level.

3.A. Regarding the question of consistency in BVA decisions, our National Appeals Office notes that 38 CFR 3.101 operates as a safeguard in view of the lack of precedential consideration in BVA decisions. When we have found inconsistency in decisions, we generally have addressed the obvious cases to the Chairman's staff for, in most instances, favorable resolution. Where the inconsistency is grossly in error, a request for reconsideration can be filed. We have found that the number of reconsideration requests and allowances have been virtually static for the last 3 fiscal years. This factor speaks to the Board's consistency.

B. This is more difficult to evaluate due to the assignment of cases to sections with expertise in particular areas. There are also cases which have multiple issues, some of which may not fall into the assigned section's area of expertise. When this occurs, the section usually calls upon the services of the BVA medical or legal consultants for an opinion on the issue. This is not to say that the judgement of individual sections will result in the same decision on a given issue every time. Even in cases with substantially similar facts, it is quite possible to have different, yet legitimate, results.

C. Given the numbers of appeals completed each year (over 40,000), it would be a monumental task to review past decisions in order to decide what is or isn't a "precedent." Since more cases are denied than are allowed, it seems possible that precedent denials may prevail, thus limiting the veteran's chances of securing a favorable resolution.

4.A We recognize that medical records may contain the findings of a physician who may not be a specialist. In such cases, we do not see a problem with panel members and staff attorneys consulting with physician panel members to obtain specific medical information. If an examining physician in the field has made an opinion which has resulted in denied benefits at the Regional Office, we would invite the opinion of a BVA specialist.

B. We believe all such consultations should be reflected in the decision opinion. This is especially true when the Board's final decision is based strictly on medical issues and not legal ones. We believe a veteran and his representatives should have access to the reasons behind the decision.

5.A We believe a case should be assigned to a section upon which a physician with that specialty sits. The problem we see is in regard to cases with multiple issues since review by several sections could be very time consuming. We recommend that in such instances the case be assigned in accordance to major disability. Utilization of other Board specialists should then be involved.

B. Cases involving multiple issues would be our main concern. As previously mentioned, we feel the Board must share its medical resources. However, we emphasize that all medical opinions should be made part of the record.

6.(1)We do not feel this criticism is necessarily valid in view of the fact that the Chairman should be striving for consistency in final decisions. The Chairman may question certain aspects of a case and feel another specialist is required. We do not feel he is tainting the independence of the expanded panel.

(2)We would support this point of view, but must qualify our position. We recognize that, in accordance with 38 CFR 3.102, reasonable doubt is not a means of reconciling actual conflict or contradiction. It is the Chairman's responsibility to ensure that the doctrine of reasonable doubt is not applied in these instances and must therefore cast a vote or expand the panel.

(3)The discretion to appoint an expanded panel does create a situation for potential abuse by the Chairman. Our National Appeals Office does not feel that, in actuality, this discretion has been abused.

7.A. Individual Medical Opinions (IMO) can be an important tool in developing and presenting cases before the BVA. However, they are not binding on the Board. Also, IMO's may very well be unfavorable in their content. PVA will request an IMO only in extreme cases.

B. Our National Appeals Office estimates that over half of our requests for IMO's are granted by the Board.

C. When such requests are denied, our organization has been apprised of the reasons.

D. There are several drawbacks to IMO's from our point of view. They are very time consuming. We are also aware of several cases where claims have actually been lost. Sometimes several attempts must be made to obtain the specific information being sought. Obviously, a favorable IMO is very beneficial in presenting as veteran's case.

PVA believes a veteran should be permitted to be heard if a request for an IMO is denied. We believe that if the the Board has the right to request an IMO, the veteran or his representative should have that right also.

8.A. We believe the problem here lies not as much with the BVA as with the entire development process of a claim. The BVA must address issues that have been certified and sent by the Regional Office. The CFR requires specific language regarding unemployability in order that due process can be applied to each issue. We do not believe unemployability is more difficult to prove at the BVA level if it has been developed properly at the Regional Office level. There must be a distinction made by those deciding BVA cases as to whether an individual is unemployable or merely unemployed.

B. Our National Appeals Office has reported that the Board has been generally reasonable in deciding such cases.

9. PVA understands that the practice of "courtesy signatures" and "top-sheeting" is utilized at the BVA. We believe that it is in the best interest of the Board's perceived integrity that this practice be discontinued.

10.A.We are unaware of this practice by Chief Board members. We know that experienced attorneys handle some easy cases. However, we do not see evidence of abuse of power in order to increase production numbers.

B. If this practice does exist, it would undermine the integrity of the Board.

11. PVA recognizes that Congressional inquiries merit the same priority response from BVA as they do when directed to any other federal agency. A "Chairman's Signature List," however, is another example of perceived inequity at the Board and should be eliminated in the best interest of all concerned.

Sincerely yours,

John C. Bollinger
Associate Legislative Director

JCB/df

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June 2, 1988

Senator Alan Cranston
Chairman
Committee on Veterans Affairs
United States Senate
Washington, DC 20510-6375

Dear Senator Cranston:

The following is in response to your request for comment on a series of questions concerning the operations of the Board of Veterans Appeals.

1. We do not have any intimate knowledge as to how the bonus system functions at the BVA. However, we are concerned that any bonus system which is directly tied to set quotas could pose a problem because of the potential compromise of quality and justice in the decision-making process. While we have no evidence that the bonus system has, in fact, adversely affected the quality of the decisions of any particular member or panel, this situation, at the very least, raises some serious questions.

2. We believe there are two factors which have directly contributed to the increasing rate of remands. One is that the decisions made by the regional offices are more likely to be improper due to the continuing loss of experienced, senior adjudication personnel within the last several years. The Board is remanding many more cases to complete developmental or adjudicative action which should have been accomplished by the regional office in the course of considering the claim or during the appeal process. Reports from the Department of Veterans Benefits confirm a continuing rise in the error rate in both rating and adjudication actions. The second factor is increased attention to due process considerations by the BVA. Cases are now more likely to be remanded to clarify issues or contentions raised by the claimant and to conduct personal hearings.

From our experience, the remand process is generally advantageous to the claimant. Approximately 25-30% of the cases remanded are allowed by the regional office following the specified action. We do not have any information as to the disposition of remand cases upon their return to the BVA for final consideration.

Remanded cases do not receive any special attention by the regional office of jurisdiction and the BVA seldom, if ever, specifies a time frame within which the required action is to be accomplished. We would like to see remanded appeals handled as expeditiously as possible. However, the regional office should not be taken out of the picture. Due process is best served by requiring the readjudication of the claim in light of any new evidence developed in the course of the remand, i.e., medical exam or OPT reports, field investigations, personal hearings, etc. Under current procedures, if a regional office's decision is still unfavorable the case will automatically be returned to the BVA for final appellate consideration.

3. We have found on occasion, over the years, some decisions which we felt were inconsistent with the facts and have challenged these through the process of reconsideration.

We have not found that the outcome of most cases is dependent on the panel to which it is assigned.

Most decisions are based upon very specific evidence and circumstances which make each case unique. The reasoning applied to the facts in each case should be proper and consistent, and reflect consideration of the pertinent laws and regulations. Prior decisions on similar fact patterns or issues, while not precedent, are informative and may offer assistance in a current case. Use of decisions in this manner, in our opinion, is preferable to a formal requirement that the Boards adhere to certain precedent decisions.

4. This becomes a critical issue when there is a difference of medical opinion in the record to be resolved. The medical member may be less qualified or knowledgeable than the physician who examined or treated the veteran.

We do not see the informal consultation that occurs within a section in the course of the decision-making process as a problem. If the medical member's opinion was the primary basis for the decision, it should be set forth in some detail in the decision to more fully inform the claimant. Reference should definitely be made in a decision where there was a consultation between the staff or members of one section and the medical member(s) of another section and if that medical opinion was the primary basis for the decision, then that physician should be a signatory.

5. We believe that insofar as possible medical issues should be referred to physicians with a particular specialty. This would clearly be in the best interest of the claimant rather than a decision rendered ultimately by someone of lesser experience in the diagnosis or treatment of a particular disease or disability. Instead of relying on an apparent informal process of consultation, we would rather see an increased utilization of medical opinions from the staff of the Chief Medical Director, and independent medical opinions.

6. In order to afford the claimant every possible consideration, we believe that in the case of a dissenting opinion, the panel should be expanded with a randomly selected "new" panel, rather than one appointed personally by the Chairman. This would most likely minimize the perception of "command influence" and the possibility of "stacking".

7. IME's are very important to both the claimant and the Board. It makes available medical expertise not found on the Board, but which is necessary to resolve complex medical questions. A referral to an IME is at the Board's discretion and not all requests by either the claimant or accredited representative are granted. We make requests for an IME or CMD opinion based upon the medical evidence of record and an apparent need to resolve a substantial difference of medical opinion.

An IME opinion constitutes further development of the evidence and the claimant should be afforded the opportunity to respond, including a personal hearing to support or rebut the opinion.

8. Several years ago, the rating guidelines changed with respect to issues which were to be inferred in claims for increased rating, particularly with respect to individual unemployability. Previously, if the claim for an increased rating was granted, the rating board was also to consider the issue of entitlement to a total rating based on individual unemployability, even though not specifically claimed. Now, a claimant is advised that a separate claim must be made for individual unemployability if this was not specifically mentioned in the claim for an increased rating. If the necessary development was not done on one or both of these issues, the Board is likely to remand the case for such action.

We have experienced a relatively low success rate in this type of case. The Board does not apply the doctrine of reasonable doubt with any consistency and we believe more of these cases should be allowed. In cases where we feel the decision has been clearly arbitrary, a request for reconsideration is made.

Questions 9, 10 and 11 involve matters currently under litigation and we cannot comment on these.

Sincerely,

Philip Riggin

E. Philip Riggin, Director
National Legislative Commission

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June 23, 1988

Senator Alan Cranston
Chairman
Committee on Veterans Affairs
U.S. Senate
Washington, DC 20510-6375

Dear Senator Cranston:

This is in response to your follow-up question to the June 9th hearing concerning the rating standard applicable to individual unemployability claims.

We would not necessarily subscribe to the statement that the "standard for total unemployability throughout the adjudication process is too strict." In our opinion, the criteria relating to unemployability, as set forth in the regulations - 38 CFR 4.15, 4.16, and 4.18, are quite specific but not overly restrictive. However, we believe very strongly that there is a problem in the manner in which these claims are adjudicated, moreso than a problem in the regulations themselves.

This type of rating by its very nature has a more subjective or judgmental component than most factual determinations. This is expressed in the language of section 4.16(a) - "Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities" (underlining supplied). We recognize and accept that there will be differences of opinion in certain cases. However, what we cannot and will not accept are rating or appellate decisions which do not reflect the full development or clarification of pertinent facts or issues because of inaction by the VA, where the VA has not given full and fair consideration to all of the facts, or where the evidence of record clearly merits the application of the doctrine of reasonable doubt under section 3.102 resulting in an allowance of the claim.

In our opinion, there have been several factors contributing to the relatively low allowance rate for this type of claim in the past few years.

Part of the problem, we believe, can be traced back to the several national reviews of individual unemployability cases conducted by DVB. Since then, the attitudes of many adjudicators and members of the Board of Veterans Appeals have become increasingly conservative with regard to this issue. This change in attitude has been a particularly undesirable outgrowth of DVB's efforts to assure the agency and the Congress that this type of case is being rated in strict accordance with the law and regulations. However, we strongly feel there has been an overreaction to the scrutiny and criticism associated with these reviews. Recent decisions reflect an obvious diminished concern for the procedural due process and appellate rights stated in 38 CFR 3.103(a) - "It is the obligation of the VA to assist a claimant in developing facts pertinent to his claim and to render a decision which grants him every benefit which can be supported in law while protecting the interest of the Government." The result is that fewer claims are allowed initially or on appeal without potentially beneficial or, in many instances, necessary development having been undertaken. Thus, many seriously disabled and economically disadvantaged veterans are forced into unnecessary appeals and reopenings.

From the reported overall deterioration in the quality of rating decisions, as indicated by the increasing error rate, we cannot help but conclude that mistakes (denials) in individual unemployability claims as well as all other types of claims are now more prevalent. It is our belief this situation stems from the continuing staffing cuts in the regional offices with the loss of many experienced adjudicators in particular. Replacement staff has less experience and less training and under the current heavy workload, productivity has become an overriding concern, rather than quality.

The increased remand rate by the Board of Veterans Appeals reflects to a considerable extent a growing concern with due process issues and a lack of requisite development. However, the Board cannot address or provide a remedy to the broader issues such as "attitude" or "quality" in actions by the regional office which may underlie an individual appeal. We continue to believe a greater number of individual unemployability cases could and should have been allowed or remanded based upon evidence available in the veteran's C-file and in accordance with the intent and letter of the regulations.

In our opinion, the most direct and effective means to address the problems of attitude and quality at both the regional office level and Board of Veterans Appeals is through training. Funding for training in recent years has been severely limited. We, therefore, strongly recommend that additional funding be provided to the VA to improve the level and frequency of training in these two areas.

We appreciate the opportunity to express these additional comments.

Sincerely,

Philip Riggin

E. PHILIP RIGGIN
Director
National Legislative Commission

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 18 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the Agency's responses to questions raised by you following the June 9, 1988, hearing regarding compensation-related legislation. Thank you for the opportunity to provide this additional information for the record.

Sincerely,

THOMAS K. TURNAGE
Administrator

Enclosure

"*America is #1—Thanks to our Veterans*"

QUESTION 1: In light of the fact that the Administration proposed S. 2306 before the enactment (by section 404 of Public Law 100-322) of section 114 of title 38, please submit the specific amendments to section 114 which you believe are needed in order to achieve the advantages which in your view S. 2306 entails.

RESPONSE: The following specific amendments are required to section 114 of title 38:

a. The caption of section 114 should be amended by striking "for certain medical items".

b. Section (a) should be amended by striking, "for use in Veterans Administration health-care facilities".

c. Subsection (b)(2)(A) should be amended by striking, "health-care". It should be further amended by striking the word, "shall" and inserting in lieu thereof, "may".

d. Section (e) should be amended by striking subsection (2) in its entirety and renumbering subsection "(3) and (4)" as "(2) and (3)", respectively. In the alternative, subsection (e)(2) should be amended by striking, "required under paragraph 2(B)(i)" and inserting in lieu thereof, "described in paragraph (2)(A)".

QUESTION 2: On page 7 of your written testimony, you state that requiring disclosure of Social Security numbers as proposed in section 304 of S. 2267, would help "curtail fraud and prevent unwarranted dual payments of benefits." How does this apply to compensation and regular DIC payments?

RESPONSE: Limited authority exists by regulation, 38 C.F.R. § 1.575, for mandatory disclosure of Social Security numbers for claims specifically affected by "outside income." As the focus on prevention of fraud, waste and abuse has intensified, additional areas to monitor have become apparent. Compensation may not be paid concurrently with military retired pay or drill pay for reserve duty. DIC may not be paid concurrently with Survivor Benefit Program payments from the Department of Defense.

To control effectively against such unwarranted dual payments, cross checking is required. Such cross checking can be handled practically only with automated matching programs which depend on common, reliable identifying data. We have found that the Social Security number is the best such identifier.

QUESTION 3: In commenting on section 302 and 303 of S. 2267, the VFW, on page 3 of its testimony, recommends that the VA and the Department of Defense "negotiate on an in-house transfer of funds thus eliminating possible confusion and expediting debt retirement." Please comment on the merits and feasibility of the VFW's proposal.

RESPONSE: The VA does not currently have legal authority to do as the VFW suggests. The VA has consistently interpreted 38 U.S.C. § 3101a as prohibiting, except on a voluntary basis, offset of veterans benefits to satisfy indebtedness arising out of programs administered by other Federal agencies. Therefore, we have proposed an amendment to section 3101c which would supercede the general prohibition.

QUESTION 4: In the joint explanatory statement accompanying the conference report on H.R. 2616 (enacted as P.L. 100-322), the conferees urged the VA to issue regulations "consistent with the broad interpretation of current law set forth in the September 10, 1984, opinion of the General Counsel to the Chief Benefits Director", which interprets the term "fire insurance proceeds" broadly enough to also include insurance proceeds for losses from causes other than fire. (H. Rept. No. 100-578, page 130.) What are your plans for issuing such regulations?

RESPONSE: The General Counsel opinion of September 10, 1984, pointed out the paradox that legislation consistently has mentioned only "fire insurance" but legislative history suggests that payments for replacement of property damaged in other ways as well should be excluded from countable income. The opinion noted that fire insurance coverage often extended to other damage such as windstorm. The General Counsel opinion spoke to exclusion of losses other than fire but only if covered under a "fire insurance" policy or a homeowners insurance policy covering damage to a dwelling.

A notice of intent to amend the pertinent regulation was proposed immediately upon receipt of the General Counsel's opinion. The notice of intent stated that all proceeds of property insurance for replacement or repair of lost or damaged real or personal property would be excluded from countable income. The General Counsel replied that the September 10, 1984, opinion did not conclude that all property insurance could be excluded because it was asset replacement, the rationale used in the notice of intent. The General Counsel reiterated that the only permissible exclusion remains, by statute, proceeds of fire insurance policies. The issue addressed in the September 10, 1984, opinion was, acccording to the General Counsel, the definition of fire insurance. The General Counsel specifically stated , for example, that proceeds of auto insurance could not be excluded. The request for approval to amend the regulation was withdrawn since it was clear that all that would be permitted under the General Counsel opinion was a slight redefinition of the term "fire insurance." It was not felt that regulatory change was appropriate, or needed.

Our proposed legislative change goes far beyond the General Counsel opinion to include any payments received due to casualty loss intended to replace or restore the value of real or personal property damaged, including by theft. Payments from disaster relief agencies or received from litigation where loss was not covered by insurance would be excluded from countable income. We believe that the proposed legislation is needed to clarify existing ambiguities and to more equitably exclude all types of casualty loss replacement.

QUESTION 5: The VA Advisory Committee on Former POWs, in its April 21, 1988, report, stated that, although -- according to a letter from the Administrator to the head of the American Ex-Prisoners of War, Inc., -- the VA has encouraged its physicians, when examining former prisoners of war, to render opinions regarding the relationship between disabilities observed and the POW experience, DM&S has been unwilling to publish directives instructing examining physicians to render such opinions.

A. What is the VA position on the rendering of such opinions and why?

Is the VA taking any steps to endure that such opinions are provided and, if so, what are they?

RESPONSE: In June 1983, the Advisory Committee on Former Prisoners of War made 21 recommendations to the Veterans Administration. Recommendation Number 7 stated, "that the examining physicians be encouraged to express their opinions about whether the diagnosed diseases may be related to or were contributed to by the POW experience."

The VA's response to the recommendation was, "We partially concur in this recommendation. It is solely within the province of adjudication to determine the legal issue of whether a condition is service connected. The Physician's Guide limits the examining physician's function to reporting observations and findings resulting from the physical and mental examinations of the POW. The examining physician must refrain from expressing opinions regarding incurrence or aggravation in military service or the degree of disability. With the introduction of the new POW examination protocol, however, the POW Physician Coordinator, after reviewing the examination results and the history questionnaire, may express his judgment as to the possible epidemiolcgical factors and/or etilogical origins of any noted disabilities."

As a result of this recommendation, the VA issued to all field facilities DVB Circular 21-81-9, dated December 6, 1983. The Circular stated, "the POW Physician Coordinator may express his or her judgment as to the possible epidemiological factors and/or etiological origins of any noted disabilities."

Another Circular was sent to all field facilities April 18, 1988. This directive, DVB Circular 21-88-5, stated, "The POW Physician Coordinator may not declare that a given disability is service connected or warrants a certain disability evaluation. The physician may express an opinion on the possible epidemiology or etilogy of any disabilities noted."

The Chief Medical Director's representative to the Advisory Committee has stated during national conference calls to all VA health care facilities that physicians may express their opinions in accordance with the circulars that were issued. Since these opinions are voluntary, there has been no need to ensure that physicians render opinions. Normally physicians only render opinions when requested to do so by a VA Regional Office.

QUESTION 5B: The Advisory Committee also asserted that the VA lacks effective procedures to ensure that VA directives regarding ex-POWs are properly implemented, citing as an example the failure by Prisoner of War Physician Coordinators to review all POWs' compensation and pension exams. What is your response to both the Advisory Committee's general statement and the specific example cited?

RESPONSE: The Veterans Administration has issued more than 42 directives to its field facilities in connection with the Former Prisoner of War Program. The program is reviewed by the systematic external review process when regional teams visit each health care facility. Where there have been significant problems at any one facility, the DM&S program official has taken direct action to resolve them by working with the appropriate Regional Director. Most of the complaints raised by the Advisory Committee members are general in nature and not specific enough to act upon. The Veterans Administration stands ready to try and resolve specific problems at any of its facilities. With respect to compensation and pension examinations, there is a requirement in DM&S Circular 10-85-48, dated March 25, 1985, that the physician coordinator conduct the final review of the medical findings with the former POW examinee. This directive has been stressed during conference calls to all VA health care facilities by the DM&S Program Official. If and when the Department of Medicine and Surgery receives specific complaints regarding the actions of POW Physician Coordinators at individual facilities, the Department is ready to review those complaints and take appropriate action.

QUESTION 6: The DAV recommends on page 5 of its testimony that the definition of a surviving spouse for purposes of the DIC-equivalent benefits payable under section 410(b) of title 38, be amended to make it identical to the definition of a surviving spouse for purposes of DIC contained in section 404.

What are your views on this proposal?

RESPONSE: The VA is not in favor of changing the 2 year marriage requirement for DIC-equivalent payments under section 410 (b). Surviving spouses receiving benefits under this section are receiving benefits at the same rate as surviving spouses of veterans who died in combat or of conditions found service connected. Under section 410(b), however, the cause of death is not service connected. We believe it is appropriate, in view of the already generous nature of section 410(b), that the basic eligibility requirements regarding relationship be more stringent. We note that the original purpose of "length of marriage" requirements for all types of benefits has been the prevention of payment to surviving spouses who may have married disabled veterans shortly before the veterans' deaths for the sole purpose of qualifying for VA benefits.

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 7 1988

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to questions raised by Senator Mitchell following the June 9, 1988, hearing regarding compensation-related legislation. Thank you for the opportunity to provide this additional information for the record.

Sincerely,

THOMAS K. TURNAGE
Administrator

Enclosures

Question 1. In his testimony, Mr. Feinberg says exempting payments from the Agent Orange settlement fund from consideration in determining VA pension eligibility or rates or eligibility for hospital and nursing home care represents a unique situation.

a. Please identify any other instances where a group of veterans have received a judgment or negotiated a settlement involving a third party in civil court related to illnesses or disabilities alleged to have risen as a result of their service?

b. Please identify any other instances where a group of veterans have received a judgment or negotiated a settlement in a civil court?

c. In addition, please provide the number of veterans who were party to such suits and the dollar amounts of the judgements or settlements?

d. Please describe the effect of the receipt of payments from the judgements or settlements identified in the prior questions on any veteran's eligibility for a VA pension or the dollar value of the veteran's pension benefit?

Answer 1.a. Tort suits may not be brought against the United States if they arise out of acts incident to military service. *E.g.*, *Feres v. United States*, 340 U.S. 135 (1950). For that reason, any recovery of tort damages by or on behalf of servicemembers for allegedly service-related injuries or deaths would necessarily have to have involved actions brought against private (or at least non-Federal) defendants. As the United States, let alone VA, would not have been party to any such actions, we have no records upon which to base a definitive answer.

Certainly we are unaware of any other recovery of the magnitude of the Agent Orange settlement. That is not to say there have not been lesser awards of which we are unaware, e.g. if servicemembers on authorized leave were injured by non-governmental tortfeasors.

b. See answer 1.a. We have no records upon which to base such an answer.

c. See above.

d. By law (38 U.S.C. § 503) and regulation (38 C.F.R. § 3.272(g)), any such awards would have to be considered countable income for purposes of veterans' pension benefits. We have no data as to the cumulative effects of such income on pension eligibility.

2.

Questions, Senator George Mitchell

Question 2. In his written testimony (page 7), Mr. Feinberg suggests that the VA has the authority to define payments from the Agent Orange settlement fund in a manner similarly to the definition already allowed for payments made by certain assistance organizations. Do you share that view?

Answer: Any suggestion that we could, under our present statutory authority, lawfully exclude from counting the anticipated Agent Orange settlement proceeds in determining pension eligibility is in error.

Section 503 of title 38, U.S. Code, commands that we count "all payments of any kind or from any source" in computing countable income, with ten limited exceptions--none of which could be construed to include a damages settlement in a personal injury or death case. Faithful to this mandate, VA's implementing regulations (at 38 C.F.R. §§ 3.262(i) and 3.272(g)) state affirmativly that VA will count the net proceeds of such damage awards or settlements.

Clearly the payments from the Agent Orange settlement fund would not, as has been suggested, fit into the "donations from public or private relief or welfare organizations" exception. The fund benefits a plaintiff class based upon a civil action it brought. The proceeds can in no way be considered donations by a relief or welfare organization.

The reason for the statutory welfare exception is that the receipt of welfare is itself generally predicated upon a recipient's other income. To count welfare benefits for purposes of pension eligibility would result in a nonsensical series of back-and-forth adjustments in both pension and welfare payments, a situation obviated by the welfare exception. S. Rep. No. 1016, 95th Cong., 2d Sess. 69 (1978). No such problem is presented by the Agent Orange settlement plan, as payouts will not be financial-need based.

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510-6375

June 13, 1988

Mr. Richard E. O'Dell, Vice President
Vietnam Veterans of America
2001 S Street, N.W.
Suite 700
Washington, D.C. 20009-1125

Dear Rick:

Thank you for taking the time to present VVA's views at the Committee's June 9 hearing. VVA's deep and abiding interest in the procedural aspects of claims for veterans' benefits gives particular weight to your thoughts on the issue of Board of Veterans' Appeals oversight.

In connection with your written submissions, I have prepared a few follow-up questions. If at all possible, I would ask that you submit your answers by June 20.

Thank you again for your assistance to the Committee in this crucial area.

Sincerely,

Frank H. Murkowski

Frank H. Murkowski
Ranking Minority Member

Encl.

cc: Honorable Alan Cranston

FOLLOW-UP QUESTIONS SUBMITTED BY SENATOR FRANK H. MURKOWSKI TO THE VIETNAM VETERANS OF AMERICA IN CONNECTION WITH THE COMMITTEE ON VETERANS' AFFAIRS JUNE 9, 1988 HEARING

1. I have reviewed the complaint in the case entitled Vietnam Veterans of America v. Turnage, filed in the United States District Court for the District of Columbia, which you provided to the Committee. In paragraph 41 of that complaint, VVA alleges that, because of the BVA practices complained of--the bonus system, "courtesy signatures" and the "Chairman's Personal Signature List"--VVA members have had claims denied which otherwise would have been granted. For example, that paragraph states at one point:

> On information and belief, because of the use of the BVA "Chairman's Personal Signature List," plaintiff St. Pierre and many members of the VVA have had their claims for benefits denied under circumstances in which, had they been a constituent or friend of a Member of Congress on the "Chairman's Personal Signature List," they would have had their claims for benefits granted by the BVA.

These are serious and extremely disturbing allegations, especially since both my name and Chairman Cranston's name are on the referenced "list." Further, as I understand Rule 11 of the Federal Rules of Civil Procedure, VVA's signature on that complaint is a certification that, to the best of its knowledge, information and belief formed after reasonable inquiry, the complaint is well grounded in fact.

a. Please describe the facts upon which are grounded your allegations that many members of VVA have had their claims for benefits denied because they were neither a constituent nor friend of a Member of Congress on the "Chairman's Personal Signature List." Please include in your answer the number of VVA members whose claims were denied for this reason.

b. Are you aware of any claimant whose claim was allowed by the BVA because

(1) he or she was a citizen of Alaska or California?

(2) Chairman Cranston or I expressed an interest in his or her case?

(3) any other Senator or Representative expressed an interest in his or her case?

c. Please describe in detail any affirmative answer to Question 1.b.

d. Please describe the facts upon which are grounded the allegation that Mr. St. Pierre's claim for benefits was denied because he was neither a constituent nor friend of a Member of Congress on the "Chairman's Personal Signature List."

2. The issue of "Travel Boards" of the BVA, which was explored at the Committee's June 9 hearing, is a difficult one. While an appearance before such a panel appears to be of significant benefit to the veteran, it seems that only a relatively few veterans can expect such an opportunity. If it turns out that that resources are insufficient to provide an opportunity for such an appearance to each appellant, what recommendations, if any, do you have with respect to the "Travel Boards"?

Vietnam Veterans of America, Inc.
2001 S St. NW
Suite 700
Washington, DC 20009-1125

(202) 332-2700

June 17, 1988

Senator Frank Murkowski
Ranking Minority Member
Senate Committee on Veterans Affairs
SH-202 Hart Senate Office Building
Washington, DC 20510

Hand Deliver

Dear Senator Murkowski:

This will respond to your June 13, 1988 letter asking follow up questions arising from the Committee's June 9 hearing.

1. I have reviewed the complaint in the case entitled *Vietnam Veterans of America v. Turnage*, filed in the United States District Court for the District of Columbia, which you provided to the Committee. In paragraph 41 of that complaint, VVA alleges that, because of the BVA practices complained of--the bonus system, "courtesy signatures" and the "Chairman's Personal Signature List"--VVA members have had claims denied which otherwise would have been granted. For example, that paragraph states at one point:

> On information and belief, because of the use of the BVA "Chairman's Personal Signature List," plaintiff St. Pierre and many members of the VVA have had their claims for benefits denied under circumstances in which, had they been a constituent or friend of a Member of Congress on the "Chairman's Personal Signature List," they would have had their claims for benefits granted by the BVA.

These are serious and extremely disturbing allegations, especially since both my name and Chairman Cranston's name are on the referenced "list." Further, as I understand Rule 11 of the Federal Rules of Civil Procedures, VVA's signature on that complaint is a certification that, to the best of its knowledge, information and belief formed after reasonable inquiry, the complaint is well grounded in fact.

a. Please describe the facts upon which are grounded your allegations that many members of VVA have had their

claims for benefits denied because they were neither a constituent nor friend of a Member of Congress on the "Chairman's Personal Signature List." Please include in your answer the number of VVA members whose claims were denied for this reason.

b. Are you aware of any claimant whose claim was allowed by the BVA because

(1) he or she was a citizen of Alaska or California?

(2) Chairman Cranston or I expressed an interest in his or her case?

(3) any other Senator or Representative expressed an interest in his or her case?

c. Please describe in detail any affirmative answer to Question 1.b.

d. Please describe the facts upon which are grounded the allegation that Mr. St. Pierre's claim for benefits was denied because he was neither a constituent nor friend of a Member of Congress on the "Chairman's Personal Signature List."

We are constrained from fully answering your first question and its component parts due to the fact that the pending litigation might be affected by premature release of the information you request. VVA has fully satisfied its obligation under Rule 11 in making the allegations stated in the complaint.

2. The issue of "Travel Boards" of the BVA, which was explored at the Committee's June 9 hearing, is a difficult one. While an appearance before such a panel appears to be of significant benefit to the veteran, it seems that only a relatively few veterans can expect such an opportunity. If it turns out that resources are insufficient to provide an opportunity for such an appearance to each appellant, what recommendations, if any, do you have with respect to the "Travel Boards"?

As noted in your question, the value of a personal appearance by a veteran before a "Travel Board" of the BVA suggests that his or her chance of prevailing in appealing an adverse VA adjudication is significantly enhanced. Conversely, the inability of other veterans to have such an opportunity suggests a system of appellate review that is neither fair nor equitable to all with like or similar appeals.

Under the current system of appellate review by the BVA, a veteran has three somewhat obvious choices in which to have his or her appeal considered.

1. The veteran may choose to personally appear before the BVA in Washington.

2. The veteran may choose to have a personal hearing before Rating Board members at the VA Regional Office (VARO), with jurisdiction over his or her claim who in turn will forward a transcript to the BVA in Washington for a decision.

3. The veteran may choose not to appear before either the BVA or the VARO, and subsequently have his or her case reviewed on the evidence of record.

In the first situation, the veteran has the opportunity to enter into the record for consideration by the BVA additional evidence and testimony further explaining his or her claim. Most importantly, the BVA is given an opportunity to assess first hand the credibility of the testimony. Unfortunately, few veterans seeking assistance from the VA have the necessary resources to travel to Washington for a personal appearance before a section of the BVA. Your own constituents represent perhaps the best example of the extraordinary expense that would be incurred by a veteran to undertake such a personal appearance. In the second situation, the VARO conducts a hearing on behalf of the BVA. However, such hearings sometimes include as panel members the very individuals who made the adverse adjudication of the veteran's claim. Even in this situation, the cost of travel within the jurisdiction of a VARO often precludes a veteran's personal appearance and results in the lost opportunity to enter additional evidence or offer testimony for consideration for the BVA.

A fourth avenue for consideration of a veteran's appeal is that of cases which are heard before a "Travel Board" of the BVA. Except by invitation, usually by a veterans' service organization representative, veterans do not have freedom of choice in selecting this opportunity for having their appeal considered. BVA's own statistics suggest that appeals heard before these "Travel Boards" have a significantly better chance of success than those that are not. Therefore, it seems reasonable to conclude:

1. That the opportunity for the veteran to present evidence or testimony before the panel with ultimate decision-making authority on his or her appeal is of measurable benefit; or,

2. Only those cases which are potential "winners," perhaps as a vehicle for positive public relations, tend to be referred to "Travel Boards" more frequently than those that are not.

It is our belief that the opportunity for a veteran to appear before a "Travel Board" is clearly in his or her best interest, and that exclusion from such an opportunity is severely detrimental in comparison to those who are afforded such an opportunity. It seems that it would be neither cost effective nor practical to give every veteran the opportunity to have such a hearing before a "Travel Board" of the BVA. We suggest a pilot project that would experiment with the following options:

1. A first requested first granted opportunity for an appearance before a "Travel Board;"

2. Telephone conference calls hearings;

3. Videotaped hearings.

Hopefully, these responses have satisfactorily addressed your concerns. Should you have further questions, feel free to contact this office again.

Sincerely,

Richard E. O'Dell
Vice President

CC: Senator Alan Cranston

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